

UNITED STATES OF AMERICA
 NATIONAL TRANSPORTATION SAFETY BOARD
 OFFICE OF ADMINISTRATIVE LAW JUDGES

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In the matter of: *

THE PUBLIC HEARING INVOLVING *

MOTORCOACH ACCIDENT AND SELECTED *

FEDERAL MOTOR CARRIER SAFETY * Docket No. HWY-05-MH-035

ADMINISTRATION OVERSIGHT ISSUES *

WILMER, TEXAS *

SEPTEMBER 23, 2005 *

* * * * *

National Transportation Safety Board
 490 L'Enfant Plaza East, S.W.
 Washington, D.C. 20694

Wednesday,
 August 9, 2006

The above-entitled matter came on for hearing,
 pursuant to Notice, at 8:30 a.m.

BEFORE: KATHRYN O'LEARY HIGGINS, Chairwoman
 BRUCE MAGLADRY
 DR. VERN S. ELLINGSTAD
 ELAINE WEINSTEIN
 DEBORAH A. P. HERSMAN
 MICHELE McMURTRY, Hearing Officer

APPEARANCES:

Technical Panel:

GARY VAN ETEN, Investigator-in-Charge
 RON KAMINSKI
 PAULA SIND-PRUNIER
 LARRY YOHE
 JOE PANAGIOTOU
 MICHELE BECKJORD
 PETE KOTOWSKI
 JULIE PERROT

Other Safety Board members assisting with hearing:

GARY HALBERT
 MARY JONES
 KEITH HOLLOWAY
 DON CHUPP
 DENISE DANIELS

On behalf of Federal Motor Carrier Administration
 (FMCSA):

ROSE McMURRAY, Associate Administrator for Policy
 and Program Development

On behalf of National Highway Traffic Safety
 Administration (NHTSA):

RON MEDFORD (Roger Saul), Senior Associate
 Administrator,
 Vehicle Safety

On behalf of Texas Department of Public Safety:

CAPT. DAVID PALMER

On behalf of Motor Coach Industries (MCI):

PAUL MURPHY, Director of Regulatory Compliance

On behalf of ArvinMeritor Corporation:

PAUL JOHNSTON, Senior Professional Engineer,
 Director, North American Foundation Brake
 Business Unit

APPEARANCES: (cont.)

On behalf of Bridgestone/Firestone:

BRIAN QUEISER, Manager, Product Analysis Department

On behalf of Sunrise Senior Living:

RICHARD SCHLOTT, Vice President of Regional
Operations

On behalf of United Motorcoach Association (UMA):

Mr. Ken Presley, Vice President For Industry
Relations

On behalf of American Bus Association (ABA):

NORM LITTLER, Executive Director, Bus Industry
Safety Council

Witnesses:

Kellie Gundling
LuMarie Polivka-West
Hilary Styron
Joe Cappiello
Vincent P. Pearce
Bill Maulsby
Capt. David Palmer
Robert Miller
Ronald Havelaar
Don Bridge
Jonathan Berszas
William Quade
Bryan Price
Larry Minor

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P R O C E E D I N G S

(8:30 a.m.)

CHAIRWOMAN HIGGINS: Good morning. We are here today to continue the hearing we began yesterday on the fire that occurred on September 23rd last year, near Wilmer, Texas, the bus fire that resulted in 23 fatalities.

We will proceed to the panel, the first panel this morning, and Ms. McMurtry, would you swear in our witnesses please.

MS. McMURTRY: Yes, ma'am. This is Panel 5, and as the previous panels, I will swear you all in at the same time. So, Ms. Gundling, Ms. Polivka-West, Ms. Styron, Mr. Cappiello and Mr. Pearce, would you raise your right hand.

(Whereupon,

KELLIE GUNDLING, LuMARIE POLIVKA-WEST,
HILARY STYRON, JOE CAPPIELLO, VINCENT PEARCE
were called as witnesses, and having been first duly sworn, were examined and testified as follows:)

MS. McMURTRY: Okay. Thank you. For the record, Ms. Gundling, would you state your full name, title, business address and company where you work?

MS. GUNDLING: Certainly. Good morning. My name is Kellie Gundling. I'm the Area Vice President for Sunrise Senior Living in Southern California. At the time of the tragedy, I was the Area Manager of Operations in Houston,

1 Texas. My company's located in McLean, Virginia. I have been
2 with Sunrise for over 9 years and worked with seniors for over
3 28 years.

4 MS. McMURTRY: And your duties and responsibilities
5 at Sunrise are?

6 MS. GUNDLING: Currently I oversee a group of
7 communities in Southern California.

8 MS. McMURTRY: Okay. Thank you. Ms. Polivka-West,
9 could you give your full name, title, the company where you
10 work, and your business address?

11 MS. POLIVKA-WEST: Yes. My name is LuMarie Polivka-
12 West, and I'm the Senior Director of the Florida Health Care
13 Association, Quality Credentialing Foundation, and we're at 307
14 West Park Avenue, Tallahassee, Florida, and I've worked with
15 Florida Health Care Association for 14 years.

16 MS. McMURTRY: Okay. And your duties and
17 responsibilities?

18 MS. POLIVKA-WEST: I'm responsible for long term care
19 policy and planning, including disaster preparedness and the
20 development of our disaster plans and working with the American
21 Health Care Association in disaster preparedness.

22 MS. McMURTRY: Thank you. Ms. Styron.

23 MS. STYRON: My name is Hilary Styron. I'm the
24 Director of the Emergency Preparedness Initiative with the
25 National Organization on Disability, and we are located at 910

1 16th Street, Northwest, in Washington, D.C.

2 MS. McMURTRY: Okay. And your title and duties and
3 responsibilities?

4 MS. STYRON: I'm the Director of the Emergency
5 Preparedness Initiative, responsible for education emergency
6 managers, first responders, disability advocates and
7 individuals with disabilities in comprehensive and inclusive
8 emergency preparedness planning.

9 MS. McMURTRY: And how long have you done this?

10 MS. STYRON: For over 14 years.

11 MS. McMURTRY: Okay. Thank you. Mr. Cappiello,
12 could you -- for the record, could you state your full, your
13 full name, your title, your company and your business address?

14 MR. CAPPIELLO: Yes. Good morning. My name is Joe
15 Cappiello. I'm Vice President for Accreditation Field
16 Operations at the Joint Commission on Accreditation of
17 Healthcare Organizations in Oakbrook Terrace, Illinois.

18 MS. McMURTRY: And how long have you done this?

19 MR. CAPPIELLO: I have been with the Joint Commission
20 for 10 years.

21 MS. McMURTRY: And your duties and responsibilities?

22 MR. CAPPIELLO: I'm responsible for all of the
23 evaluations of our 17,000 healthcare accredited facilities
24 across the United States and I also take the lead in the Joint
25 Commission's issues regarding disaster preparedness and

1 emergency response.

2 MS. McMURTRY: Okay. Thank you. Mr. Pierce, could
3 you state your name, your full name, your title, your company
4 -- well, we know you're with DOT, and the -- your address?

5 MR. PEARCE: My name is Vincent Packard Pearce. I'm
6 the National Response Program Manager in the Office of the
7 Secretary of Transportation. We are located at 400 7th Street,
8 Southwest, here in Washington, D.C. In that position, I'm
9 responsible for all of the Department's activities under the
10 National Response Plan. I've been at the U.S. Department of
11 Transportation for six years, and in this position for one
12 year.

13 MS. McMURTRY: Thank you. Member Higgins, the Panel
14 has been sworn and they are qualified, and I'll turn the
15 questioning over to Michele Beckjord and Ron Kaminski.

16 MS. BECKJORD: Good morning. This first panel today
17 will examine what information is available to nursing homes
18 about and the requirements for transporting special needs
19 individuals, specifically during emergencies such as the
20 evacuation of Hurricane Rita last September. In addition, the
21 panel will discuss what has changed in evacuations and planning
22 involving special needs persons since this accident in Wilmer,
23 Texas, and what information is now available to nursing homes,
24 hospices and caregivers for the transportation of persons with
25 special needs.

1 Good morning, Ms. Gundling.

2 MS. GUNDLING: Good morning.

3 MS. BECKJORD: Thank you for being here. As a
4 witness for Sunrise Senior Living, and the parent company or
5 management company of Brighton Gardens of Bellaire, the nursing
6 home facility involved in this accident, can you please tell us
7 what did Sunrise do to begin and when to begin planning for the
8 evacuation trip from Houston to Dallas?

9 MS. GUNDLING: Okay. The evacuation planning began
10 actually years ago. The community has a disaster plan which
11 provides not only for transportation but it also provides for
12 everything else you would do in evacuating a community, whether
13 it be ordering and packing medications, ordering food supplies,
14 all of the things that you can think of that you would do when
15 you're evacuating your own home, and then you multiply that by
16 the number of residents you would have in a community.

17 Our initial intent was to shelter in place which is
18 always the safest route and the desired route, and so at the
19 beginning of the hurricane, those were our initial
20 preparations.

21 MS. BECKJORD: And what role did Sunshine or Sunrise
22 Corporate play in the evacuation decision in Texas and on
23 contracting for evacuation transportation?

24 MS. GUNDLING: The Sunrise Corporation was involved
25 throughout the entire process. If you will recall, we had

1 Hurricane Katrina in Louisiana just about three weeks before.
2 We had safely evacuated residents out of New Orleans and
3 surrounding communities into Texas on a charter bus. So when
4 Hurricane Rita came on, we again initiated all of the phone
5 calls and the conference calls that we would. We had six
6 communities in the City of Houston to prepare for. So we began
7 the conference calls with multiple people on board assessing
8 each community as to what it could withstand, how far it was,
9 whether it was in the path, what they would need to shelter in
10 place, and making sure that all those orders had been done.

11 MS. BECKJORD: What specifically in the guidance that
12 you had mentioned that you had been working on for years,
13 talked about the type of transportation that you would need to
14 do an evacuation and also did it mention anything about the
15 staffing that would be needed to participate in the evacuation
16 and on the bus trip itself?

17 MS. GUNDLING: Okay. I think there's a couple of
18 questions there. First on transportation, each community does
19 have one bus, that is wheelchair accessible, and that we use
20 for inner city evacuations which is typically what a nursing
21 home or an assisted living would be preparing to do and what
22 they indeed practiced doing.

23 So in the ideal situation, we would have evacuated to
24 our sister community that we have a transfer agreement with,
25 and we did indeed evacuate about 20 residents to that

1 community. Unfortunately, this was pretty much an
2 unprecedented event in Houston. We were full with evacuees
3 from Louisiana who had still not gone home and couldn't go
4 home, as I think most people are aware. So all of our
5 communities were full, did not have capacity to take the rest
6 of the residents.

7 So the Plan B, if we had to evacuate would be going
8 to another sister community which was located about four hours
9 away and could accommodate those residents who did not go home
10 with family members and could not be accommodated locally.

11 And the second part of your question, if you could
12 remind me.

13 MS. BECKJORD: In the planning that you had set up
14 for this type of situation where you would need to evacuate
15 your facility, was there any discussion or was there any
16 guidance about what type of staffing you would need during the
17 bus trip itself?

18 MS. GUNDLING: We really never had to discuss
19 specific staffing because we had volunteers. The whole city
20 was evacuating. Some of our team members wanted the
21 transportation to leave, and so we were very fortunate to be
22 well staffed with both licensed nurses and certified nurses
23 aides who were all familiar with the residents. So on this
24 particular bus, we had three nurses and three nurse aides. One
25 of the nurses was the Assistant Director of Nursing from the

1 community. One of the nurses was the Area Director of Resident
2 Care. So she was the senior nurse in charge of the whole
3 region, and then we had another very longtime head nurse from
4 the community who traveled with them as well.

5 MS. BECKJORD: And in planning for the evacuation,
6 how exactly did Sunrise come across Bus Bank?

7 MS. GUNDLING: Well, we first used Bus Bank to
8 contract with to move residents out of Louisiana. We had a
9 contract in Louisiana with a bus company who did move our
10 residents from one community to a hotel in Mississippi. When
11 that community became unlivable for those residents and we knew
12 we needed a longer term solution, that bus company would not
13 cross state lines, and so we contacted Bus Bank who found a
14 charter bus for us to bring those residents into Houston, down
15 into San Antonio. We had a very good experience with them. I
16 saw the bus myself, helped get the residents off at the final
17 destination in San Antonio, talked with the residents. It was
18 just your normal charter bus that you would expect any of us to
19 get on.

20 MS. BECKJORD: Okay. And was there any specific
21 criteria that Sunrise used to choose the transportation
22 provider for this evacuation?

23 MS. GUNDLING: Well, a couple of things. Again, if
24 we could have evacuated locally, if we still weren't full from
25 Katrina, from Louisiana, we would have used our own buses. At

1 that point in Houston, it was all over the news that cars were
2 running out of gas, gas stations were running out of gas. So a
3 charter bus had diesel. The charter bus had more comfortable
4 seating for a long, you know, a long trip. I mean if you can
5 imagine our, our buses are more like a shuttle bus, that takes
6 you from your hotel to the airport or to the car rental place.
7 And so they're fine for short trips, but they're certainly not
8 fine for a trip that we knew would be longer than four hours,
9 but certainly not as long as it was. A charter bus was very
10 comfortable. A big point for us was it had a restroom on board
11 so residents could be taken to the restroom on the trip. There
12 was no place to pull off on the freeways in Houston, and so we
13 knew that we needed something of that caliber to make that kind
14 of trip with our residents.

15 MS. BECKJORD: Okay. And was Sunrise aware that the
16 State of Texas and the Texas Building and Procurement
17 Commission had advertised that they did have some buses
18 available for those who needed it for the evacuation?

19 MS. GUNDLING: No, ma'am. Honestly, I never saw an
20 advertisement. The first notification to the best of my, to
21 the best of my knowledge that we received was just a couple of
22 months ago. Throughout the night, I spoke with FEMA. We spoke
23 with the Department of Human Services. The City knew what we
24 were doing, and nobody ever mentioned the Texas Procurement
25 Commission.

1 MS. BECKJORD: Okay. And as a result of what you've
2 been through, as Sunrise changed their evacuation procedures as
3 a result of your experiences?

4 MS. GUNDLING: I would not say we've changed our
5 procedures. I think that we've gone in and looked at
6 everything as anybody would if they were involved in this kind
7 of experience and tragedy. We have looked at contracting
8 nationally with a bus company. The sad thing we learned is
9 that buses can still be in operation, perhaps when they
10 shouldn't be, that the regulations weren't there.

11 We work in a very highly regulated industry. So it
12 didn't occur to me that a bus would be available to transport
13 our residents that had those issues.

14 MS. BECKJORD: Okay. Well, thank you very much.

15 MS. GUNDLING: Thank you.

16 MS. BECKJORD: Good morning, Ms. Polivka-West, and
17 thank you for being here today.

18 MS. POLIVKA-WEST: Good morning.

19 MS. BECKJORD: I understand that as of last night you
20 did submit testimony in written form.

21 MS. POLIVKA-WEST: That's correct.

22 MS. BECKJORD: Okay. And it will be entered in its
23 entirety into our public record of these proceedings. I just
24 wanted to let everyone know. And although you were invited to
25 be a witness on behalf of the American Health Care Association,

1 you were also chosen by this National Association because of
2 your work as a state member affiliate with Florida Health Care
3 Association and you've got extreme experience with hurricane
4 preparations for your facilities.

5 So with your experience, can you please tell us what
6 are some of the challenges that are faced by these nursing home
7 administrators when you're trying to obtain transportation for
8 emergencies?

9 MS. POLIVKA-WEST: Yes. Thank you. And I can't say
10 enough about the experience that Florida's had. Over the past
11 few years, we've had eight hurricanes, and every hurricane is a
12 different disaster that we have to attend to.

13 Let me begin by referencing Hurricane Charlie that
14 came in August 13, 2004. It was supposed to have come in
15 through Tampa/St. Pete, and we evacuated over 10,000 nursing
16 home residents and a large number of assisted living residents
17 as well. We safely evacuated to Orlando.

18 Hurricane Charlie came in, took a turn into Punta
19 Gorda, and it was a Category 4. That was unexpected as well,
20 and proceeded up the middle of the state with a wide swath of
21 dangerous winds and debris was going everywhere. Storms were
22 taking roofs off of hospitals, nursing homes, assisted living
23 facilities, right through Orlando where our evacuees had been
24 taken. And so we were faced right after the storm with the
25 hospitals that were in desperate need of evacuation in the

1 Charlotte County area, needed all of the ambulances. It meant
2 that all of the nursing home contracts with ambulances went out
3 the window.

4 And so we were faced with a large number of nursing
5 homes and assisted living facilities all of a sudden in
6 competition with the hospitals and the hospitals were able to
7 commandeer all of the ambulance transport because they had
8 first priority, and that is true under our National Disaster
9 Medical Plan and the National Response Plan. Both have a high
10 priority for hospitals and do not mention long term care in
11 terms of emergency transport. And I would like to underscore
12 that as a major concern to raise before the Panel today.

13 So what we had to do right after Hurricane Charlie
14 came through the southern part of the state, the Florida Health
15 Care Association working in concert with the American Health
16 Care Association, tried desperately to find other means of
17 transport. We took whatever we could find to move residents
18 from the nursing homes that were without roofs and the
19 residents were in the hallways of these facilities with rain
20 still coming in. The assisted living facilities were also in
21 the same type of desperate situation.

22 I want to also point out, there was no loss of life
23 but it was a very difficult situation that we were dealing
24 with, and it took days at times to move residents and very
25 uncertain situations.

1 I just want to use our experience as an example that
2 the best laid plan oftentimes is not realized because you
3 cannot determine the actual path of a storm such as a hurricane
4 or a type of disaster like that. And you're looking for a type
5 of transport that will safely evacuate residents who are frail,
6 disabled, cannot move easily, oftentimes will have oxygen
7 needs, oxygen dependency and, yeah, you're faced with having to
8 move residents in a very quick, uncertain manner, and you take
9 what you can and trust that the buses that you are accessing
10 are going to meet the requirements that the State and the
11 Federal Government have them under.

12 MS. BECKJORD: Okay. And based on your answer then,
13 what information was available to nursing homes before this
14 2005 situation with all the different hurricanes and for
15 planning for emergency evacuations and securing proper
16 transportation?

17 MS. POLIVKA-WEST: Well, we did learn from the storms
18 of 2004, and in 2005, we did develop our disaster preparedness
19 guide, and this is the American Health Care Association and the
20 Florida Health Care Association disaster preparedness guide
21 that we have made available to our residents and facilities and
22 staff and family members. We widely distribute this through
23 the American Health Care Association. And this guide is very
24 detailed in terms of the preparedness for disasters, not only
25 hurricanes, but for fires and other kinds of events that --

1 catastrophic events that a facility would have to prepare for.

2 And in this guide, we do have a transportation
3 planning part of this, but it's on the responsibilities that
4 have to be addressed by the facilities, by the nursing homes on
5 behalf of the residents and the staff. And the emphasis is on
6 the decision whether or not to evacuate or to shelter in place.
7 We have a very frail, disabled population that we care for,
8 high acuity levels with dependencies that we prefer always to
9 try to shelter in place if possible because of the transfer
10 trauma, because of the uncertainty of the transport that may be
11 available to safely evacuate. We know that.

12 But at the same time, could I provide some statistics
13 for one county, Duvall County, as an example of what we're
14 dealing with when we talk about safe transport for our frail,
15 disabled individuals in our facilities. Duvall County is a
16 large county where Jacksonville is the primary city. There are
17 9,450 licensed beds. Those are 11 hospitals, 30 nursing homes
18 and 66 assisted living facilities, representing 9,450
19 individuals who may need transport, emergency transport if a
20 major hurricane such as a Category 4 or 5 were to come in
21 through Jacksonville through Duvall County.

22 There are only 107 ground based medical transport
23 vehicles, 107. And then if you add in the adjacent counties
24 where they have 44 emergency transport vehicles, the number is
25 still insufficient. The same sort of picture is true for Tampa

1 Bay. We know this, and throughout the Gulf Coast Region, there
2 is not enough of emergency transport available to meet the
3 possible need for evacuation.

4 So the problems that we face have to be dealt with I
5 would suggest at a national level.

6 MS. BECKJORD: And I know that in the information
7 that you have provided last night that will be in the record,
8 you've updated an addendum to your disaster preparedness plans
9 for all of your member facilities, and one of those plans that
10 you've updated is titled the Bus Safety Transport Checklist.
11 And is there information regarding what type of bus
12 transportation the facilities should contract with and how to
13 evacuate their patients?

14 MS. POLIVKA-WEST: In the -- we have provided this to
15 you, the Bus Safety Transport Checklist, which American Health
16 Care Association and Florida Health Care Association will be
17 distributing at the end of this month actually, we are
18 emphasizing the preparation for an emergency decision making,
19 and if the decision in terms of having to move, the emphasis is
20 on appropriate staffing to accompany the residents, the means
21 for efficient and safety transport evacuation to the bus, in
22 terms of the, the actual contracts with the bus companies
23 themselves, we do. We read the Federal Regulations and the
24 state regulations and the Federal Government and the state
25 governments are responsible for insuring that the buses have

1 met their licensure responsibilities. We assume that the bus
2 companies, that our facilities contract with meet, those
3 requirements. Our facility administrators have to be
4 responsible for the safety of their residents in making the
5 decisions on whether or not to evacuate from a facility, from
6 the nursing home or the assisted living facility. They are not
7 tasked by the Federal or state laws to be responsible for
8 insuring the safety of the bus itself. That is the
9 responsibility of the licensure laws in the state and the
10 Federal Government.

11 MS. BECKJORD: Thank you. And while investigating
12 our Wilmer, Texas accident, the Safety Board has come across
13 the Texas Health Care Association's guide to hurricane
14 preparedness, and their checklist does include a recommendation
15 for staffing of the bus at a minimum of at least one nurse and
16 three CNAs for every 25 residents, certified nursing
17 assistants, and also to take into consideration staffing for
18 the acuity of your patients. What does the Florida Health Care
19 Association and American Health Care Association recommend?

20 MS. POLIVKA-WEST: That is the recommended standard
21 that is in the disaster preparedness guide, that is marketed at
22 the national level by the American Health Care Association.

23 MS. BECKJORD: Okay. And are there any other brief
24 recommendations that the American Health Care Association has
25 for evacuating special needs patients in emergencies?

1 MS. POLIVKA-WEST: I would like to refer to the late
2 winter 2006 hurricane summit that was held in Tallahassee with
3 the support of the John A. Hartford Foundation and the American
4 Health Care Association in Tallahassee.

5 We had representatives from all of the Gulf Coast
6 States and Georgia, and Georgia was a major receiving facility
7 from -- for evacuees from Louisiana after Hurricane Katrina.
8 We learned at this hurricane summit about the failures of the
9 National Response Plan to really address long term care
10 evacuation decision making and the outcome of those decisions,
11 nor does the National Disaster Medical System Plan address long
12 term care.

13 These are factors that need to be addressed. We
14 learned at this hurricane summit, with the participants from
15 the other states, especially Louisiana, after Hurricane
16 Katrina, that the best laid plans in terms of evacuation
17 transport were waylaid by other parties that commandeered the
18 buses that were on contract for the evacuation of their
19 residents. We learned also that the information systems that
20 should be available and interoperable communication systems
21 that would be able to track residents' information, medical
22 information from one type setting to another, it's not there.
23 It's sorely lacking in our country. So we had residents that
24 were taken to the tarmac of New Orleans Airport and from there
25 they were picked up by the military planes and taken to Air

1 Force bases in Georgia, and there was no information that
2 tracked them. There was no identifiable information. Many of
3 these residents had dementia. They could not be identified.
4 So we learned from that many things in terms of tracking
5 information, making sure that our residents have identification
6 bands and that there is a system for tracking medical
7 information that's very important.

8 So we have been on a fact finding mission since the
9 2004 hurricane season with the American Health Care Association
10 and our members, and every storm we learn from. We make
11 revisions and we still have many tasks that are undone.

12 MS. BECKJORD: Thank you, Ms. Polivka-West. Good
13 morning, Ms. Styron.

14 MS. STYRON: Good morning.

15 MS. BECKJORD: Thank you for being here this morning.
16 In your role as the Director of the Emergency Preparedness
17 Initiative for the National Organization on Disability, and
18 your work in making sure that persons with disabilities and
19 special needs are included in emergency preparedness, I
20 understand that you work directly with the Federal Government's
21 Interagency Coordinating Council that was established by the
22 President in 2004?

23 MS. STYRON: Yes, that's correct.

24 MS. BECKJORD: Okay. And this Council also includes
25 many Government agencies including the Department of

1 Transportation?

2 MS. STYRON: Yes, it does.

3 MS. BECKJORD: And in your role with both state and
4 national associations and agencies, you've also had experience
5 as a first responder directly working with personnel from
6 hospitals, assisted living centers and nursing homes to provide
7 preparedness information?

8 MS. STYRON: Yes, ma'am.

9 MS. BECKJORD: Thank you. With your background, can
10 you explain for purposes of our discussion here, what exactly
11 is meant when we say transporting persons with special needs?
12 Can you give us a definition?

13 MS. STYRON: Sure. I think first we need to start
14 with breaking down the question. You asked about the
15 definition of special needs and also the definition of
16 transportation.

17 Special needs, in identifying and defining what
18 special needs are, is actually hard to put your finger on if
19 you are trying to determine their needs because it presents
20 challenges due to their overall size, the demographic
21 breakdown, their location within any given jurisdiction, what
22 they have access to service-wise and human services, and their
23 acuity, their level of independence or what they may refer to
24 as daily living assistance. There's a big myriad and spectrum
25 in disability.

1 Generally when we talk about the term special needs,
2 we're referring to people with disabilities, mobility
3 impairments, sensory impairments, cognitive or mental health
4 impairments as well. We've now expanded that definition to
5 elderly, pediatric populations, medically fragile and also
6 depending on the nature of the event that you are facing, it
7 could be homeless, non-English speaking, poverty or careless
8 individuals.

9 MS. BECKJORD: Thank you. And based on that
10 information, how would you define the type of proper
11 transportation for special needs persons including information
12 such as staff, type of vehicle and will this differ in the
13 event of an emergency evacuation due to different types of
14 disasters or is that one overall criteria?

15 MS. STYRON: When you're making transportation plans
16 in an all hazards emergency environment, you're considering
17 hazards other than just hurricanes. We're beyond terrorism and
18 hurricane based planning in this country. We're looking at all
19 hazards. A facility could actually be impacted by a fire and
20 force an evacuation. So you need to look beyond a natural
21 hazard. It could be manmade. It could be an event of
22 immediacy. So some events causing evacuation happen without
23 warning.

24 Transportation planning for these situations is going
25 to vary again on the census population of the facility and what

1 staff and healthcare providers you have available to you. When
2 you're doing transportation planning for any type of facility,
3 especially if you expect those individuals in healthcare to
4 stay and provide care to your residents and patients, you must
5 also consider them in your transportation planning. So you're
6 looking at your residents, your patients, your staff and the
7 staff's families. That expands the definition of a census for
8 any facility, double your numbers or triple them, depending on
9 how large a facility is, and understand that if there's however
10 many there might be in Duvall County, you know, you have 9400
11 beds, raise that number exponentially. Transportation
12 planning, whether it's an accessible bus because not everyone
13 with a disability requires paratransit or a bus with a
14 wheelchair lift, inboard barrier. They may just require, if
15 I'm deaf or hard of hearing or perhaps I might be blind,
16 perhaps I just need assisted transportation to actually
17 evacuate. If I'm medically fragile or have a mobility
18 impairment, I might need a bus that's more accessible or have a
19 medical care facility on board with me. Patient care ratio to
20 staff is going to vary on the acuity of the patient.

21 If family arrives at your facility as you're
22 evacuating, it's best to not separate whole families. They can
23 actually help you with basic patient care in keeping that
24 patient calm in that transfer environment.

25 MS. BECKJORD: Thank you. And what actions have you

1 taken or what has the National Organization on Disability taken
2 since the 2005 hurricanes to educate those who care for special
3 needs persons on how to plan for evacuations in obtaining
4 proper transportation for them?

5 MS. STYRON: Prior to actually the 2005 hurricanes,
6 EPI was started in 2001, officially after 9/11 to work with
7 emergency managers, first responders and individuals with
8 disabilities to prepare them for emergencies and disasters.

9 As far as the planners and emergency managers are
10 concerned, we work at the Federal, national, state and local
11 levels so that they can understand what the needs might be and
12 the myriad of issues we're talking about is not just a hospital
13 evacuation. People live independently. They are on their own.
14 They might have daily healthcare assistance but there is a
15 larger community at broad that we're dealing with when we're
16 talking about evacuation planning.

17 In 2005, we actually started our aggressive
18 conversations with different Departments of Transportation at
19 the local level as they rebuild their transportation planning
20 post Katrina and Rita. Every transportation planner and
21 emergency manager in this country is on notice of needing to
22 expand or drill down into the microlevel of a concept of
23 operations that's appropriate and effective.

24 What the facilities need to remember is that this is
25 a competitive environment for supply and demand, and if the

1 nursing homes have not coordinated their transportation plans
2 with the transportation providers, the transport planners and
3 the emergency managers in any given community, it'll be a rock,
4 paper, scissors, for who gets the asset come evacuation day.

5 So we're really trying to instill at the national
6 level and down into the grass roots, cooperation and inner
7 operability as well as a cross dialogue at the table. It
8 doesn't mean you all have to get along every day. It does mean
9 that you need to share your information so that you're planning
10 with this population and not for them in a vacuum as we've seen
11 prior.

12 MS. BECKJORD: Thank you. And where can the public
13 find out more information about what the National Organization
14 on Disability recommends for themselves, for where their loved
15 ones might be in a facility and that sort of thing, for
16 planning on what to do in an emergency?

17 MS. STYRON: We've generally referred people when
18 they're asking for information to that Department of
19 Transportation websites. The Interagency Coordination Council
20 has a disability preparedness resource site as well. If you're
21 looking at local planning, we strongly urge individuals to
22 contact their local emergency management agency or Department
23 of Transportation. They also need to be referring back to the
24 nursing home facility itself to find out what the
25 administrator's plans are. You need to be an active consumer

1 as much as possible in your own safety planning. We have
2 information on our website at the National Organization on
3 Disability, the Easter Seals' Project Action has good
4 transportation planning information, and many different states
5 across the country actually have disability executive offices
6 at the state level that are associated with the states'
7 governors. So those are also good resources on what the state
8 is actually planning.

9 Legislation is in the Senate and the House on the
10 Hill here in Washington, D.C., and also at state levels to
11 increase transportation planning with healthcare facilities as
12 a direct result of the lessons learned from Katrina and Rita.
13 So there's a variety of resources out there.

14 MS. BECKJORD: Thank you very much.

15 MS. STYRON: Uh-huh.

16 MS. BECKJORD: Good morning, Mr. Cappiello.

17 MR. CAPPIELLO: Good morning.

18 MS. BECKJORD: Thanks for participating in our
19 hearing today. As I understand the Joint Commission's mission
20 is to improve the safety and quality of care provided to the
21 public through healthcare accreditation of facilities and
22 services that support performance improvement for these
23 organizations.

24 MR. CAPPIELLO: That's correct.

25 MS. BECKJORD: And your role within this Commission

1 includes the management of this accreditation process and also
2 you've lead this Commission's initiatives on emergency
3 management. Is that correct?

4 MR. CAPPIELLO: Also correct.

5 MS. BECKJORD: While the Joint Commission does work
6 mainly with hospitals, I'd like to ask you questions both about
7 the hospitals themselves, their emergency planning and also
8 your thoughts related to evacuation planning for other
9 healthcare facilities.

10 Before Hurricanes Rita and Katrina, what information
11 was available to member hospitals or hospitals that had gone
12 through your accreditation process about safe methods for
13 transporting their persons, their patients, in an emergency
14 evacuation of a facility?

15 MR. CAPPIELLO: Well, let me step back just for a
16 minute and sort of paint for you a little bit of a picture of
17 who the Joint Commission accredits. We accredit the
18 preponderance of hospitals in the United States, about 85
19 percent of all of the fixed hospital facilities which amounts
20 to somewhere around 5,000 facilities, but we also accredit
21 about 12,000 other facilities to include long term care, home
22 care, ambulatory care, et cetera, and I only say that because
23 it gives us a very, a very interesting view of healthcare in
24 the healthcare infrastructure of communities, not just based on
25 fixed facilities. So I sort of wanted to state that up front

1 so that you know that whatever information that I provide you
2 today comes from the lens, that is quite a wide angle lens, to
3 healthcare in communities.

4 Now the question that I think you asked me was what
5 sort of information do we provide our facilities and what kind
6 of information did we provide them before the hurricanes of
7 2005?

8 Well, the Joint Commission has about a 30 year
9 history of providing or developing standards. Standards are
10 the, the issues that all of our accredited facilities must
11 address to become accredited. They have to meet those
12 standards. We have about a 30 year history of developing
13 emergency management standards for our healthcare facilities,
14 and quite honestly, those standards are more acute and broader
15 and have more depth for hospitals than they would have say for
16 a clinic. And that is because of the acuity of the patients
17 that are seen 24 hour care, et cetera.

18 We have a very precise series of scientifically based
19 standards that include an all hazards approach. In other
20 words, we require all of our healthcare accredited facilities
21 to have undergone a hazard vulnerability assessment, meaning to
22 look at their community and say, what are the possible things
23 that could befall this community, and Florida, most certainly
24 at the top of its list, would be hurricanes. It may be floods
25 along communities in Mississippi. It may be forest fires or

1 earthquakes on the West Coast, those sorts of things.

2 So we asked all of our accredited facilities to take
3 in consideration those things that may impact the community and
4 begin to arrange their emergency management plans, their
5 response plans around what those hazards might be, and we've
6 taken an all hazards approach to that development.

7 We also require them, depending on the type of
8 facilities, and I will go back to hospitals, that they have
9 emergency generators, that testing and exercising is done for
10 emergency drills at least twice a year, that they have plans
11 that account for and take into consideration whether they need
12 to shelter in place or evacuate that facility. We have
13 standards that require them to have cooperative planning with
14 other health care facilities within the community, and we also
15 have standards that direct them to engage in community based
16 planning.

17 MS. BECKJORD: Thank you. And do you require or have
18 as part of your standards, specific information on whether your
19 facilities, in the event they do have to completely evacuate to
20 another locations, what they, what they must have prior to or
21 included in their information about what their contracts are,
22 what they do for staffing, and what their plans are
23 specifically?

24 MR. CAPPIELLO: Well, I think some of the other
25 witnesses here this morning have talked about the elusiveness

1 of trying to plan for an evacuation event. Is the storm going
2 to come? Is it not going to come. There's no predictability
3 to some events. Earthquakes, et cetera. So we ask them to be
4 prepared and have plans that are flexible to be able to engage
5 in any sort of event that may befall that community.

6 We give them direction, both through standards and
7 through the information that we supply them through
8 publications, websites, et cetera, on how to think through what
9 I would describe as the calculus for evacuation. What are the
10 things that come into play to decide (a) whether you shelter
11 employees or whether there is the need to evacuate?

12 Oftentimes, and I believe it was said in earlier
13 testimony this morning, that ideally you would rather shelter
14 in place. The risk to those that seek care there is less, and
15 we often find, at least through our experience, going back and
16 reflecting on hospitals for a minute, that that may be the most
17 fortified structure within a community, that because of
18 building codes, because of the requirement for emergency
19 generator power, because of supplies of food and medicines, et
20 cetera, that that may be quite honestly the most fortified
21 structure in any community. And it also serves as a haven for
22 the community.

23 In times of disasters, the citizens of that community
24 don't rush to the firehouse. They don't rush to the police
25 station. Where they, where they rush to is the hospital. It

1 is a haven that provides them possible electric power, where
2 they can cool off and stay cool in a, in a bad temperature
3 environment. There is food there. There is medicine there,
4 and whether they need care or not, many go there in the event
5 they may require care somewhere along the line.

6 And what usually occurs in disasters that impact a
7 community at large, is that the healthcare infrastructure of
8 that community just begins to disintegrate. First things to go
9 are home care, and if you think of the patients that are being
10 maintained successfully in the home through home care, suddenly
11 that's gone. The nurses who, who come and provide medicine,
12 who provide therapy, et cetera, gone. Clinics close.
13 Pharmacies close. Physicians' offices close.

14 Usually the last two type of facilities left standing
15 are long term care facilities and hospitals. And so they begin
16 to swell with not just those that are assigned or that are
17 patients at those facilities, but they begin to get all of the
18 patients that were being successfully maintained at the home
19 suddenly appear at those facilities to seek care, the
20 medicines, the treatments, the oxygen and those kinds of things
21 that suddenly are no longer available to them.

22 MS. BECKJORD: And as a result of Hurricanes Katrina
23 and Rita, has the Joint Commission made any changes in the
24 standards or produced anymore information for your member
25 affiliates?

1 MR. CAPPIELLO: We started about now six years ago
2 when we made a significant change to our standards and we went
3 to this all hazards approach that you've heard described today.
4 And we felt that we needed to have some eyes on the ground to
5 look at situations in which the standards were applied, and to
6 see if those standards had changed the readiness of facilities
7 to respond to disasters, and we can trace them back to Tropical
8 Storm Allison that hit Houston in 2001, when we went, a team
9 led by myself and others, started to debrief communities and go
10 to healthcare facilities that had experienced some sort of
11 disaster, whether that was Tropical Storm Allison in Houston,
12 wildfires in the west, 9/11 we were in New York and at the
13 Pentagon, the storms, the hurricanes of 2004 and 2005 in
14 Florida and New Orleans. We were on site at all those
15 facilities to try and learn how we could help better preserve
16 the medical assets of those communities. And we've learned a
17 number of things that we have shared with the field.

18 The first thing that we did as a result of 9/11, we
19 understood going to New York the confusion that oftentimes
20 veils a community when it's struck by disaster, and the lack of
21 communication and coordination between healthcare entities
22 within that community. And so we then adapted our standards
23 and made new requirements that cooperative planning between
24 healthcare facilities within a community is mandatory, must do.

25 We also discovered that many communities do not have

1 healthcare sitting at their emergency planning sessions, that
2 at the emergency operations center, healthcare in many
3 communities has no seat. There is this belief in many
4 communities that if people get sick or they are hurt, we just
5 send them to healthcare, and healthcare sort of takes care of
6 them, but there's no coordination with trying to maintain
7 healthcare to insure that healthcare has adequate resources,
8 that they have the transportation that is required, et cetera.
9 So we have ratcheted up our standards to account for those
10 things.

11 We then have done case studies, which we have
12 published time and time again. We have had a series of
13 roundtable where we have brought experts in the field together
14 to discuss and address these kinds of problems, and the latest
15 publication that came from our roundtable that we completed in
16 2004, Standing Together is the title of community based
17 approach to planning which we have put in our website, has been
18 downloaded some 300,000 times.

19 So we are trying to share our experience with the
20 field, in trying to give a realistic perception and a realistic
21 approach to planning.

22 MS. BECKJORD: Thank you very much, Mr. Cappiello.
23 Good morning, Mr. Pearce.

24 MR. PEARCE: Good morning.

25 MS. BECKJORD: Thanks for being here this morning and

1 representing the USDOT in our hearing. I apologize that we
2 don't have a name tag for you, but you are with the USDOT
3 Office of Secretary of Transportation.

4 MR. PEARCE: Correct.

5 MS. BECKJORD: During yesterday's panel on evacuation
6 of motorcoaches, we heard briefly about the DOT's participation
7 in this Interagency Coordination Council on Emergency
8 Preparedness and individuals with disabilities.

9 The purpose of this Council is to insure that the
10 Federal Government appropriately supports safety and security
11 for individuals with disabilities in emergency situations. Is
12 that correct?

13 MR. PEARCE: As I understand it, yes.

14 MS. BECKJORD: Okay. Within this Council that DOT
15 has established, the Emergency Transportation Subcommittee, to
16 evaluate existing transportation regulations, their
17 relationship to the needs of individuals with disabilities
18 during emergencies, and as a result of that, we would ask that
19 the DOT could discuss what exactly prior to Hurricanes Katrina
20 and Rita specifically, what information was available to the
21 public from the DOT about transportation of elderly and
22 disabled passengers in an emergency situation?

23 MR. PEARCE: In July of 2005, U.S. Department of
24 Transportation established the Emergency Transportation website
25 for people with disabilities at emergencyprep.dot.gov. The

1 site was established to support the goals of the President's
2 July 2004 Executive Order on people with disabilities and
3 emergency preparedness as well as the Interagency Coordinating
4 Council.

5 The website contains basic information on emergency
6 preparedness, transportation accessibility and evacuation
7 methods for certain modes of transportation including transit
8 and rail systems. It's designed to be an emergency
9 transportation preparedness resource for individuals with
10 disabilities, their family members, their caregivers.
11 Additionally the site includes information for transportation
12 providers, on addressing the unique needs of people with
13 disabilities during an emergency. It contains documents and
14 links to other websites intended to provide information both to
15 members of the disability community and to emergency response
16 planners and the responders themselves. Most other Federal
17 agencies with relevant websites have linked to our site.

18 MS. BECKJORD: Thank you. And I understand that as a
19 result of the Hurricanes Rita and Katrina, DOT and FEMA as well
20 went in and reviewed the Federal and state plans for emergency
21 evacuations. What's been done specifically for special needs
22 persons in emergency planning, particularly concerning
23 transportation.

24 MR. PEARCE: Under the Safe, Accountable, Flexible,
25 Efficient Transportation Equity Act: a Legacy For Users,

1 SAFETEA-LU, the U.S. Department of Transportation --
2 Secretaries of Transportation and Homeland Security, in
3 coordination with the Gulf Coast States and contiguous states,
4 jointly reviewed and assessed Federal and state evacuation
5 plans. The U.S. Department of Transportation's Office of Civil
6 Rights actively participated in the Department's review of Gulf
7 Coast community catastrophic evacuation plans. The primary
8 purpose of this participation was to insure that the needs of
9 people with disabilities were considered throughout the review.

10 As a result, plan evaluation criteria incorporated
11 disabilities-specific considerations. Disability information
12 is contained in the report findings and recommendations. The
13 report contains substantial information on the unique needs of
14 individuals with disabilities during an evacuation. There are
15 also several recommendations on how Federal, state and local
16 governments can better address the needs of this segment of the
17 population during a catastrophic evacuation.

18 The report's findings indicate the plans to include
19 individuals with disabilities are underdeveloped. Evacuating
20 the seriously ill, determining the locations of individuals who
21 do not reside in institutions and the logistics of evacuation
22 pose major challenges. According to the report, provisions to
23 meet transportation and sheltering requirements of these very
24 special needs groups, should be improved in most evacuation
25 plans. The full report is available at emergencyprep.dot.gov.

1 General findings of the study included that state and
2 local emergency plans and operations for evacuations were not
3 well integrated, not sufficient to meet the demand of a massive
4 evacuation and that the agreements upon which those plans
5 depended needed to be updated.

6 MS. BECKJORD: When does the DOT expect feedback from
7 the Federal Government and agencies, states, local governments
8 and other organizations from whom these or to whom these
9 recommendations were made?

10 MR. PEARCE: The report itself included feedback from
11 state and local governments and organizations. We took a very
12 proactive position in, in accomplishing that. There were in-
13 person visits made to each state that was studied in order to
14 gather their lessons learned, successful practices and other
15 forms of input. This also allowed our team of subject matter
16 experts to share what they had learned thus far and to test
17 hypotheses that they were formulating.

18 We invited the National Council on Disability, the
19 American Public Transit Association, the American Bus
20 Association, the Association of American Railroads, the
21 American Trucking Association, and the American Association of
22 State Highway and Transportation Officials to provide input.

23 There is no requirement for formal feedback from
24 state and local governments and organizations. USDOT has
25 offices in each state that work directly with the state and

1 local agencies. Additionally, we have formal USDOT
2 Headquarters interfaces to these and other organizations, such
3 as the National Academy of Science, that provide forums for
4 discussion of the findings and planning for action based on
5 those results.

6 We are continuing our outreach. For example,
7 Mr. John Bennison, of our Office of Civil Rights, recently
8 spoke at the Alabama/Mississippi Hurricane Conference, where he
9 served on a panel entitled, Transporting People with Special
10 Needs During an Evacuation. He addressed strategies on
11 evacuation of people with disabilities as well as the
12 recommendations from the study on this topic that were
13 generated. Participants included emergency management and
14 other public officials from both states.

15 MS. BECKJORD: And where can the public, including
16 caregivers themselves, who take care of people at home and also
17 nursing homes and hospitals and others, where can they find out
18 some information about what you've talked about here also,
19 perhaps some of those strategies that Mr. Bennison mentioned at
20 this conference? Where can they find out some more information
21 so they can better prepare to help evacuate people with special
22 needs?

23 MR. PEARCE: Several Federal agencies have websites
24 dedicated to supporting the needs during disasters of persons
25 with special needs. The Department of Homeland Security

1 disabilitypreparedness.gov website, our own
2 emergencyprep.dot.gov website. There's a Department of Justice
3 website which would be difficult to spell out verbally, but
4 which I will prepare. The Federal Emergency Management Agency
5 has course materials that are available online on assisting
6 persons with special needs during disasters. The Department of
7 Labor also has a website for persons with disabilities during
8 disasters.

9 MS. BECKJORD: Thank you very much, Mr. Pearce. This
10 panel is done with their questions.

11 CHAIRWOMAN HIGGINS: Thank you. We'll now ask for
12 questions from the parties. FMCSA.

13 MS. McMURRAY: Thank you, Chairman Higgins. We do
14 have one question. It was said that using paratransit to
15 transport special needs patients during a pending evacuation is
16 not the ideal choice because it is more intended for short term
17 trips. And this question is directed to Ms. Styron or
18 Mr. Cappiello. What, in your view, would be the ideal
19 transportation choice given the current design of modern day
20 over-the-road motorcoaches, for moving severe needs patients 4
21 to 6 hours or over 100 miles since paratransit appears not to
22 be a very good choice for moving such patients?

23 MS. STYRON: Thank you for the question. Regarding
24 paratransit, I consider paratransit to also be ambulance or
25 ambulet so that there is at least a basic level of medical care

1 provided should a patient require it. Those long over-the-road
2 long hauls as we call them in EMS, are very difficult on
3 patients, but if there is no other form of medical transport
4 available, it is going to be uncomfortable to do long haul
5 transporting anyway, just the very nature of laying on a long
6 spine board or laying in the gurney, et cetera, is going to be
7 uncomfortable. So that's where the patient care comes in. If
8 there are motorcoaches that have wider seats or more
9 comfortable seating available, more room on the bus, et cetera,
10 that might be an option as well, but basically over-the-road
11 hauling is going to be uncomfortable. I don't know that there
12 is an end all solution for that other than, you know, dealing
13 with the acuity and patient care issue. Medical transport is
14 going to be necessary. I think using an ambulance was more
15 comfortable than using a C-130 DOD plane. It really is going
16 to vary on what you're trying to mass evacuate and the
17 patients' needs.

18 MR. CAPPIELLO: I would just add a bit to that. I
19 think the problem becomes more acute as the complexity of care
20 becomes more acute. You cannot take acute care patients from a
21 medical center and put them on a bus and hope that that's going
22 to be an effective way to transport them.

23 So the issue here becomes that there then becomes a
24 small end of the available means to transport acutely ill over
25 the long haul, ambulances, ICU type vehicles, et cetera, are in

1 very short supply and will be readily demanded within the
2 community by many. So coordination and availability of that
3 specialized transportation is going to be a huge issue. That's
4 why hospitals would rather shelter in place because of the risk
5 of transporting the medically frail is just, is just too high,
6 and oftentimes the issue is compounded by the fact that there
7 is no dedicated transportation route for these patients. I
8 think some of the experience that we saw in the evacuations in
9 Texas with snarls on the roads, et cetera, there's no dedicated
10 transport lanes, for instance, for these facilities to quickly
11 move from one city to a distant location, drop their patients
12 off and return for the next load. So transportation of the
13 acutely ill becomes even a more confounding problem.

14 CHAIRWOMAN HIGGINS: No more questions.

15 MS. McMURRAY: No more questions.

16 CHAIRWOMAN HIGGINS: NHTSA.

17 MR. SAUL: No questions from NHTSA.

18 CHAIRWOMAN HIGGINS: Sunrise.

19 MR. SCHLOTT: I have a question for Ms. Gundling. It
20 was suggested that there should have been only one oxygen tank
21 on the bus for each resident who required oxygen. Would you
22 please address that issue?

23 MS. GUNDLING: Sure. I think I'd like to go back
24 first and add though to the last answer in that there's a
25 difference between an acutely ill resident or patient in a

1 hospitals and an assisted living resident. There's a world of
2 difference there medically, and so when we're talking about
3 mass transportation or evacuations, we're not talking about
4 evacuating a whole hospital where you have ICU patients. We're
5 talking about the elderly who may have ambulatory issues.

6 In terms of oxygen and this came up yesterday, if we
7 were on a normal evacuation within the city to a sister
8 community, if we were on an activity or an outing or a trip to
9 the medical center, we would just take, you know, one oxygen
10 tank, but for an evacuation, you have to take what you consider
11 medically necessary.

12 So if you have a resident on oxygen, and you know
13 you're going to have a long trip, and there's a certain flow
14 through the oxygen tank, you have to take what will be
15 determined. In this case, we actually worked with FEMA that
16 evening to determine how much oxygen we had left, what the flow
17 of traffic was to our destination, and what they determined we
18 would need to have remaining to get to that destination.

19 MR. SCHLOTT: Very good. Thank you. No further
20 questions.

21 CHAIRWOMAN HIGGINS: Texas Department of Public
22 Safety.

23 CAPT. PALMER: No questions. Thank you.

24 CHAIRWOMAN HIGGINS: Arvin Meritor.

25 MR. JOHNSTON: Thank you, but no questions.

1 CHAIRWOMAN HIGGINS: Bridgestone.

2 MR. QUEISER: Thank you. No questions.

3 CHAIRWOMAN HIGGINS: MCI.

4 MR. MURPHY: Thank you, but no questions.

5 CHAIRWOMAN HIGGINS: American Bus Association.

6 MR. LITTLER: I have one I suppose general question
7 that kind of goes to future planning, and it's, it's to any of
8 the witnesses that wish to respond. We've heard yesterday and
9 today mention of the Interagency Coordinating Council
10 established under the President's Executive Order of 2004, and
11 I have reviewed copies of the meeting minutes and the annual
12 report of 2005, and have an understanding of the planning
13 that's going on. We heard testimony yesterday from a
14 representative from Delaware from who runs the paratransit
15 service for the state there, that they've entered into an
16 agreement with the surrounding states of Maryland and
17 Pennsylvania to provide appropriate transportation for moving
18 special needs patients or residents in the event that there's
19 an emergency evacuation if they have time permitting, and I'm
20 wondering if anybody here has had experience with the Council
21 and if this has been discussed or is being discussed or being
22 looked at because it appears to be an interesting model.

23 MS. STYRON: I can take that question. I'm familiar
24 with the Interagency Coordination Council. We speak daily to
25 many different parts of the Coordinating Council.

1 Regarding mutual aid agreements across state lines,
2 that is a standard in emergency management. The fact that
3 Delaware is doing that with their surrounding states is a good
4 example. Other states follow that practice as well. As far as
5 transportation planning, you must have mutual aid partners
6 across state lines. One of the things that happened though for
7 nursing homes and for healthcare facilities was the question of
8 transferring patients across state lines and what was the
9 continuity of care or guardianship issues, et cetera. While
10 nursing homes may have sister facilities in local
11 jurisdictions, they were not prepared necessarily to go across
12 state lines into Colorado or Georgia or move out beyond the
13 Gulf Region. So that was a standard that they were not used
14 to.

15 Emergency managers traditionally utilize emergency
16 management mutual aid agreements and compacts to run all kinds
17 of operations, whether it's hurricanes, fires, hazardous
18 materials or terrorism. It is a standard in the industry. It
19 is one that transportation planners across the country are
20 really looking at engaging, and they are also looking to engage
21 the transportation industries in different modalities of
22 transportation in those plans so that we could have redundancy.
23 It's not just motorcoaches. It's railway. It might be air,
24 different metro systems, if you have access to mass transit,
25 like that. So it's a broad domino effect but, yes, with the

1 Interagency Coordination Council and their Emergency
2 Subcommittee for Transportation, we're working through that,
3 that's also being done at DOT and different subcommittees and
4 emergency management as a general rule. That's what we
5 practice.

6 MR. LITTLER: Thank you. That's all the questions we
7 have.

8 CHAIRWOMAN HIGGINS: Thank you. United Motor Coach.

9 MR. PRESLEY: No questions.

10 CHAIRWOMAN HIGGINS: Okay. We'll turn to our panel
11 here. Ms. Weinstein.

12 MS. WEINSTEIN: Thank you. I have a few questions.
13 I think this is either for Mr. Cappiello or Ms. Polivka-West.
14 It seems -- we have in the materials that we were given, the
15 healthcare hazard control plan. Are you familiar with that?

16 MR. CAPPIELLO: I am not.

17 MS. WEINSTEIN: You are not.

18 MR. CAPPIELLO: Not by that title.

19 MS. WEINSTEIN: Okay. Perhaps I can ask
20 Ms. Beckjord. Do you know who submitted that particular
21 document?

22 MS. BECKJORD: Is that a document that was in the
23 docket itself?

24 MS. WEINSTEIN: In the -- right, and in the briefing
25 book.

1 MS. BECKJORD: In the briefing book. I'm not quite
2 sure who submitted that document to the briefing book.

3 MS. WEINSTEIN: Okay. My questions are out of the
4 document which I read and perhaps they, they can be responded
5 to. That was the basis of the information that I was getting
6 on how to transport special needs populations, and this morning
7 you've mentioned, the panel's mentioned several other
8 documents, the bus safety transport checklist, American Health
9 Association has guidelines, the Joint Commission has
10 guidelines, DOT has guidelines. Who guidelines do you follow?

11 MS. POLIVKA-WEST: On behalf of American Healthcare
12 Association, we have worked very diligently to develop our bus
13 safety transport checklist, but prior to this checklist, we
14 have in our disaster planning guide, a section on
15 transportation, also on evacuation, that provides a guidance in
16 terms of the supplies that have to be preordered, the
17 medications, the medical records, the staffing, and
18 preparedness in terms of the distance, based upon the weight
19 and the medical conditions and acuity of the residents being
20 transported. We always emphasize the necessity for redundancy
21 and disaster planning and contracts with transport and other
22 suppliers, and we follow our guide. Through the American
23 Health Care Association, we believe that this is a very
24 complete guide at this point in time, but, of course, we cannot
25 anticipate every challenge that we have to face given the

1 disaster that we come in -- that we have to experience. We do
2 the best we can to plan for that though.

3 MS. WEINSTEIN: Ms. Gundling, whose guidelines do you
4 follow?

5 MS. GUNDLING: Well, within Sunrise, we had a
6 disaster plan, a disaster manual and skilled nursing in Texas
7 that is reviewed by the licensing agency including the life
8 safety code, fire marshal's office. So we followed that guide.
9 We did all those things that have been referenced in terms of
10 taking medical records with us, ordering the medication supply,
11 the food, fueling the generators, fueling the buses, all of
12 those things that are standard, we followed that.

13 MS. WEINSTEIN: And Ms. Styron, would you want to
14 comment?

15 MS. STYRON: I don't have guides that I follow. I
16 tend to create them, but generally what I use is a clearing
17 house of information from the Department of Transportation,
18 FTA, and any other transportation sources as well as
19 fundamental research in transportation planning, University of
20 Florida, Texas A&M, et cetera, trying to create the best
21 practice models for the healthcare associations and other
22 industry practitioners -- practitioners, excuse me, to develop
23 their checklists and their standards of care for transportation
24 planning.

25 MS. WEINSTEIN: Thank you. I think Ms. Gundling, I'd

1 like to direct this question to you. The healthcare hazard
2 guidelines, which nobody seems to be aware of, suggest that all
3 vehicles have a means of communicating with a central
4 dispatcher. Is that part of Sunrise's emergency plan
5 guidelines and would that be -- would it also -- a second
6 question, would it be a requirement that the driver be able to
7 speak English?

8 MS. GUNDLING: The answer to the first question, it
9 was our understanding through the Bus Bank, that there was an
10 emergency contact number. We received them when we chartered
11 the bus. I had those numbers. The bus driver had a phone.
12 Because systems were sporadic in Houston, I communicated
13 throughout the night via Blackberry with somebody on the bus.
14 One of the steps that Sunrise has taken since then is to put
15 together a technology packet, if you will, of different
16 satellite phones and different things that we can drop ship
17 right into an area that's having communication difficulties.

18 MS. WEINSTEIN: Thank you. The guidelines that I've
19 been looking at provide a lot of information on moving
20 patients, physically and taking care of their personal needs
21 but there's very little in anything that I've seen on finding
22 FMCSA compliant buses. Would anyone on the panel care to
23 comment on whether or not that should be included in the
24 guidelines or as Ms. Polivka-West said, do you just rely on the
25 Federal and state government to provide you with buses that

1 meet Federal requirements?

2 MS. POLIVKA-WEST: I will respond to that. We have
3 learned from the tragedy in Houston and Wilmer, Texas, and we
4 understand that the facility contracted with what they thought
5 to be a bus that would provide safety, compliant care and
6 provide for the transportation of the residents in a very
7 difficult setting.

8 We understand that each time a facility has to
9 evacuate based upon a bus transport that is under a very
10 usually hurried situation, that there are requirements that the
11 state has. In Florida, we have requirements that the state
12 enforces in terms of bus certification and the license of the
13 driver. We assume that those would be provided in accordance
14 with the agreement that the facility has with the bus company.

15 At this point in time, though I can tell you that
16 there has been a heightened awareness on the part of providers
17 and we also learned in 2005, after the bus incident, the
18 catastrophic accident that occurred in Texas, that we heard
19 from some of our members in Florida that their bus contracts,
20 their contracting agencies were telling the facility that they
21 were no longer going to provide that type of transport. So we
22 have concerns that facilities now are having difficulty finding
23 bus companies willing to provide transport for the frail elders
24 that may need oxygen to be carried with them on the buses.

25 So it's not just the concern about having contracts

1 with bus companies. It's being able to facilitate those
2 contracts now as well. And we appreciate that Texas now, for
3 example, has -- the Texas Governor and the Government there has
4 a plan to provide supplementary bus transport, and I plan to
5 take this proposal back to Florida and see what we can do to
6 possibly mirror that in our state.

7 MS. WEINSTEIN: Thank you. Ms. Styron, any comments?

8 MS. STYRON: No.

9 MS. WEINSTEIN: Mr. Cappiello?

10 MR. CAPPIELLO: No.

11 MS. WEINSTEIN: Thank you. I have no further
12 questions.

13 CHAIRWOMAN HIGGINS: Thank you. Dr. Ellingstad.

14 DR. ELLINGSTAD: Ms. Beckjord and the panel have been
15 very thorough, and I have no questions.

16 CHAIRWOMAN HIGGINS: Mr. Magladry.

17 MR. MAGLADRY: Just a couple of quick questions.
18 Ms. Polivka-West, when you were talking about Jacksonville, for
19 example, and the county you noted, you talked about a number of
20 emergency vehicles, 107 and 44 in the next country.

21 MS. POLIVKA-WEST: Right.

22 MR. MAGLADRY: I presume you're talking about
23 ambulances or ambulets as I think you referred to them?

24 MS. POLIVKA-WEST: That is correct.

25 MR. MAGLADRY: Is there a priority beyond the use of

1 those vehicles? Is there a priority in which you pick other
2 vehicles?

3 MS. POLIVKA-WEST: The facilities take what they can
4 in their communities. We have, we have worked with our local
5 emergency operations centers. In fact, Florida Health Care
6 Association has a desk at the ESF8 Center in Tallahassee and
7 now we have volunteers that go into the counties for post-
8 disaster recovery from our disaster preparedness teams, and so
9 we work very closely with the local emergency operations. We
10 found that we had to do that in order to be a voice for
11 providers at the local level because, again I think I've said
12 it, but the national response plan and the national disaster
13 medical system plan does not include long term care in terms of
14 evacuation planning and requirements. And so we very
15 forcefully have put our volunteers at the local ESC, ESF8.
16 That's the health medical desk of the emergency operations.
17 And so that, that awareness at the local level has helped us in
18 working with the emergency operations centers in trying to work
19 with the local transport means because this is a local
20 community responsibility we feel. And, the American Health
21 Care Association has participated in a national panel, at the
22 national disaster medical system preparedness hearing, in 2006.
23 I think that was in May of 2006, emphasizing that the local
24 communities and the transport companies have to be together at
25 the table to look at the needs. And if there's going to be a

1 prioritization, it has to be looking at the healthcare needs of
2 the aging community and the persons for disabilities that are
3 not aging, but have other types of disabilities. And, we have
4 to look at this as a community.

5 At this point in time, our disaster plan advises
6 providers they are on their own. They have to look at this
7 responsibility as their own. At the same time, we also talk
8 with our emergency operations center in terms of working
9 together, and trying to plan for transport decisions in advance
10 of the disaster occurring. But oftentimes, it's when it
11 happens when you realize that the transport is not there, that
12 you have to work together with the emergency operations centers
13 trying to get relief.

14 MR. MAGLADRY: I presume, but I'll ask the question.
15 Have these discussions worked their way down to the
16 utilization of school buses as well?

17 MS. POLIVKA-WEST: Yes, they do. In fact, we have in
18 our transportation plan, guidance in terms of a facility
19 representative getting a school bus license. We recommend one
20 person at each facility be licensed as a school bus driver if
21 possible in order to help when you have a lack of providers --
22 drivers to provide transport.

23 MR. MAGLADRY: Thank you. I have one questions for
24 Ms. Gundling. Did the decision on when to evacuate, was that
25 impacted by the transportation availability?

1 MS. GUNDLING: No, sir. The decision -- the planning
2 to evacuate, it started earlier in the week because you have to
3 contact families, you have to find out what they're doing. You
4 have to let them know what you might be doing but the final
5 decision to evacuate came Wednesday evening after I received a
6 call from the City of Bellaire Fire Marshall urging me to move
7 everybody to safety because we were now in the direct path of
8 the storm, and our building would be flattened.

9 MR. MAGLADRY: Was it a consideration prior to that
10 phone call that you might shelter in place?

11 MS. GUNDLING: Yes, sir.

12 MR. MAGLADRY: Thank you. That's all the questions I
13 have.

14 CHAIRWOMAN HIGGINS: Member Hersman.

15 MS. HERSMAN: Thank you for your leadership and
16 allowing me to participate in this forum.

17 I have a couple of questions for the panel.
18 Ms. Gundling, I understand there were 18 oxygen canisters
19 onboard. Is that accurate?

20 MS. GUNDLING: You know, I don't know the exact
21 number.

22 MS. HERSMAN: Do you know how many passengers on
23 board required oxygen?

24 MS. GUNDLING: Yes, two.

25 MS. HERSMAN: Only two?

1 MS. GUNDLING: Yes.

2 MS. HERSMAN: I've noticed that there's new guidance
3 out from the Department of Transportation on transportation of
4 oxygen in a passenger compartment, and they recommend that it
5 be limited to 99 pounds, total weight of the cylinders is 99
6 pounds. And Greyhound had suggested that this was enough for
7 two to three passengers. Is this consistent with what was
8 being carried on the bus for the passengers that were being
9 transported from your facility?

10 MS. GUNDLING: You know, I really couldn't answer
11 that. What I could say is that in the evening when the traffic
12 was moving slower, that the contra lanes opened later than we
13 had been told. So when we left we thought we would have a
14 better flow of traffic. I contacted the state operations
15 center and FEMA, and I walked through with the medical director
16 the number of residents we had on the bus with oxygen, what the
17 flow rate was, and they helped calculate how many tanks I would
18 need to get to our destination based on what they thought the
19 flow of traffic was at that time.

20 MS. HERSMAN: I think the expectation is there would
21 be four bottles per passenger, and there was significantly more
22 than that, and so my question is, is this something that
23 potentially would need to be waived in an emergency
24 circumstance if there was a required transport of multiple
25 passengers, maybe more than two? I know a number of the

1 Federal requirements and guidelines were waived. Would this be
2 something that would also need to be waived, and do we get to
3 some point in this, and maybe DOT could answer this, if we have
4 a significant number of oxygen canisters on board where there
5 should be a placarding requirement?

6 MS. GUNDLING: I would answer first that I think it
7 is something that might need to be waived. Simply because
8 someone requires oxygen does not make them frail in any other
9 way, and when we were assessing the residents in terms of who
10 we absolutely had to evacuate locally and who could make the
11 trip, because there were residents that we were able to find
12 room for locally and we evacuated on our buses and ambulances.
13 We took those residents who were more medically frail.

14 In terms of the numbers of tanks, they were not all
15 full but again, you know, I'm not an oxygen expert but when I
16 walked through it with the state, it seemed to be appropriate.

17 MS. HERSMAN: And how about the placard, the
18 potential placarding issue once we get up to scores of oxygen
19 canisters?

20 MR. PEARCE: And I'm going to defer on that. I'm not
21 a specialist in hazardous material. So it probably would not
22 be appropriate for me to comment.

23 MS. HERSMAN: Okay. Maybe we can get a response back
24 from the Department of Transportation from someone.

25 The second issue I'd like to ask about is,

1 Mr. Pearce, I know the DOT OIG, and I've read your testimony
2 from earlier this year to the Congress, has looked at the
3 Landstar contract from last year and looked at some of the
4 internal controls. Aside from tightening up the internal
5 financial controls, when it comes to contract services, are
6 there other things that have changed after the hurricane season
7 last year with respect to operational controls or special needs
8 transportation? I note that last month, the Department of
9 Transportation awarded a \$32.5 million contract to Coach
10 America. What types of things are written into that contract
11 to insure that we're going to have accountable service that's
12 going to be there and safe?

13 MR. PEARCE: The contract itself as you would expect
14 has an extensive scope of work in which our Office of Civil
15 Rights was involved very deeply in defining those requirements
16 as well as all of the components of the U.S. Department of
17 Transportation.

18 For example, in the contract, the first deliverable
19 is a set up of standard operating procedures. Those operating
20 procedures specifically address accommodation of persons with
21 disabilities or special needs, loading and transport of
22 hazardous materials, specifically calling out oxygen cylinders
23 and emergency evacuation of buses due to fire or other
24 incidents. So, so -- at the beginning, the first things that
25 Coach America is delivering to us are very specialized plans

1 and procedures that they will then use and train their
2 operators in the use of, to address these as well as a variety
3 of other topics.

4 The service that we are delivering through the
5 contract is a much more comprehensive service than we were
6 tasked by FEMA to deliver in response to Hurricane Katrina. We
7 are providing our own communications and, of course,
8 communications post-Katrina was as has been described, a severe
9 challenge. We're talking about what I've heard estimated as a
10 90,000 square mile area in which there was little to no
11 landline or cellular communications. So maintaining any form
12 of communications with our 1105 buses evacuation fleet was, was
13 an immense challenge in the heart of the disaster area.

14 We are going to establish a dispatch function in the
15 disaster area, potentially impacted area, where we will be
16 managing the -- and dispatching the fleet. We will be
17 operating and maintaining the fleet. We will be providing
18 logistic support to the fleet. We will be providing, if
19 necessary, fuel to the fleet. We have organized within the
20 Department of Transportation, a cross modal team of experts who
21 are, in fact, engaged in, in very detailed planning right now
22 for the evacuation of the 12 fragile parishes in Southern
23 Louisiana. We have deployed personnel to Baton Rouge to
24 continue to work in an interagency group on the details and
25 that team is being led personally by my Acting Director of the

1 Office of Intelligence Security and Emergency Response.

2 So the contract has a great deal of capability that
3 we were not tasked with last year but feel is necessary to
4 accomplish a safe and efficient transportation of a large
5 quantity of individuals from the potentially impacted area.

6 MS. HERSMAN: I appreciate your response very much,
7 and with the Chairman's permission, maybe we could ask for a
8 copy of the, of the proposal and the plan.

9 CHAIRWOMAN HIGGINS: Please submit it for the record.

10 MS. HERSMAN: Connected to this \$32.5 million
11 contract, I notice that Coach America has taken out ads in
12 trade publications, soliciting qualified U.S. bus operators to
13 provide inner city motorcoaches and qualified drivers for
14 evacuation services, talking about that they've received this
15 contract, and that they're looking for buses and bus drivers.
16 Specifically what types of things might be required for
17 provision of service? Would perhaps the carrier have to have a
18 satisfactory safety rating? Would they have to provide
19 additional information? Are they looking for only interstate
20 carriers or is there a plan to waive intrastate carriers'
21 limitations and allow them to perhaps perform these emergency
22 services? Are those things that you can comment on?

23 MR. PEARCE: I can comment on some of them. Our
24 planning assumption for the evacuation of South Louisiana is
25 that there is the potential for interstate movement, although

1 obviously the desired result, it will be to shelter the
2 evacuees within the State of Louisiana if at all possible.

3 What we thought was really critical in, in acquiring
4 these services was to have a professional bus operator, an
5 operator who would bring to this, not only the ability to reach
6 out to the motorcoach industry, but also a considerable number
7 of its own internal organic assets. That's what we sought and
8 what we believe we have obtained.

9 We are going to be -- we, the Department of
10 Transportation, will be relying not only on, on what the
11 contractor can demonstrate but, in fact, will be doing our own
12 inspections of vehicles. We have a team engaged this week, for
13 example, in the -- down in South Louisiana looking at the
14 proposed staging areas, the proposed pick up points, and
15 assuring that the locations the state is designating are
16 adequate for the operation of the fleet in a safe and efficient
17 manner. So we are, we are seeking the finest qualifications we
18 can, and then verifying in every way that we can reasonably
19 identify.

20 MS. HERSMAN: Thank you very much for your response
21 and for the follow up you will provide to us.

22 CHAIRWOMAN HIGGINS: Thank you. Ms. McMurtry.

23 MS. McMURTRY: I just have one question. Mr. Pearce,
24 the Department of Defense requires an extensive evaluation of a
25 carrier before it allows passenger carriers to transport

1 military personnel. Is the Department considering using the
2 same criteria as the Department of Defense, or was that even
3 discussed?

4 MR. PEARCE: I'm not familiar with the Department of
5 Defense's requirements for movement of military personnel. So
6 I really can't make a qualified response.

7 CHAIRWOMAN HIGGINS: Thank you. I have a few
8 questions. Fundamentally, our job is to make sure that
9 transportation is as safe as possible, and while this accident
10 happened during an evacuation, there are issues around just how
11 safe this overall operation was, and I'm interested in really
12 what's changed in this last year.

13 Ms. Gundling, you said that Sunrise had been planning
14 for a very long time, and I look at the evacuation plan that
15 was submitted or the preparedness -- hurricane preparedness
16 plan that was submitted for the record, and there's one bullet
17 on transportation that says, transportation arrangements will
18 be confirmed. What did Sunrise do prior to last year's events
19 and since last year's events to insure that the transportation
20 you provided would be as safe as possible?

21 MS. GUNDLING: I don't have in front of me the plan
22 you have, but we have a transfer agreement with a sister
23 community to transfer residents to. We work with ambulances
24 for our transfers, and then we have our own bus. Does that
25 answer your question?

1 CHAIRWOMAN HIGGINS: In this case though, you
2 contracted with Bus Bank and were provided I guess two
3 motorcoaches. And I'm just, again, a lot of issues have come
4 out of our investigation of this accident, and our goal is to
5 make sure transportation is as safe as possible, and I'm trying
6 to understanding from our panelists, given that the
7 responsibility still to this day for emergency evacuation rests
8 with, at least in the State of Texas, and I think I'm hearing
9 the same thing in Florida, it really is the local provider's
10 responsibility to make those plans and to transport people if
11 you can't shelter in place, and the question I'm struggling
12 with is how do we make sure, notwithstanding all of the
13 information that's been provided here today, what information
14 do you have to make sure that this transportation would be
15 safe?

16 MS. GUNDLING: Well, my opinion for the first
17 question is that I am, I am not a bus operator. I'm not a
18 mechanic. I'm not an engineer. I'm not a charter bus company.
19 As was mentioned by one of the other panelists, we focus on
20 what do we need to do to transfer the residents safely in terms
21 of their medications, their medical records, notifying their
22 families and all of the other myriad of supplies that we would
23 have to have. As an organization, we're looking at a national
24 bus contract, looking for those things that we would have hoped
25 would have been provided the first time in terms of the safety

1 of the bus.

2 CHAIRWOMAN HIGGINS: Did Sunrise have a national bus
3 contract last year?

4 MS. GUNDLING: We did not. In the State of
5 Louisiana, we had a contract with a bus company to move those
6 residents. However, again when we realized a week post the
7 hurricane that they couldn't go back and we had to move them,
8 the bus company would not move them across state lines.

9 CHAIRWOMAN HIGGINS: So you were looking -- Sunrise
10 Corporate is now looking at trying to -- thinking about a
11 national bus contract?

12 MS. GUNDLING: Yes, ma'am. I think the other thing
13 that has changed is the notification that came out this year
14 about the Texas Commission on Procurement, and what they're
15 doing would be another resource for us.

16 CHAIRWOMAN HIGGINS: That was my next question, and
17 thank you for mentioning that because I think you testified
18 that you did not contact the Texas Building and Procurement
19 Commission last year. Is that correct?

20 MS. GUNDLING: We were not aware they existed.

21 CHAIRWOMAN HIGGINS: And yet in the State of Texas,
22 they are the state agency, the Big State of Texas, with
23 responsibility for emergency preparedness and emergency
24 planning. You weren't aware?

25 MS. GUNDLING: No. The contact we received was from

1 the Department of Human Services asking us what we were doing.
2 They were not mentioned then. It was not an agency we were
3 aware of. It did not come through any trade association. The
4 first notice to the best of my knowledge that's come out was
5 just a couple of months ago, or within the last few months.

6 CHAIRWOMAN HIGGINS: And is it your understanding
7 that -- why don't you tell me your understanding, I don't want
8 to put words in your mouth, what, what their role is and
9 what -- how they might be of help to you now?

10 MS. GUNDLING: I personally have a very limited
11 understanding because I'm no longer working in the State of
12 Texas or in Houston.

13 CHAIRWOMAN HIGGINS: We did -- we were hoping for a
14 representative of the Building and Procurement Commission to be
15 here today but because of the hurricane season that we're in,
16 they could not come. And they did provide us some answers to
17 some of the questions we asked. And I just might -- we will
18 make sure that everybody has a copy of this because it's -- it
19 does indicate that they have now signed a contract, I guess --
20 I think with CUSA, which I guess is Coach USA, for 1100
21 motorcoach type buses, and there's a lot of specifications
22 about what those buses should provide.

23 I guess my more fundamental question is, how do we
24 make sure again notwithstanding all the discussion we've heard
25 about interagency committees and websites, I mean I think if I

1 were in your place or in the place of a nursing home, am I
2 supposed to go to every federal website to find out what is
3 available? You know, I find that problematic, and I'm not in
4 that business. So the question is what is -- how do people on
5 the ground, we have to make these decisions, how do they have
6 good information about safe transportation -- safe and
7 appropriate transportation for the populations that we're very
8 concerned about here? What's really changed in a year?
9 Anybody who wants to answer that please.

10 MS. POLIVKA-WEST: Could I just reference what we
11 thought that the provider community follows is in the Federal
12 Regulations, 49 C.F.R. Chapter 3, 355.25, where it says, in
13 terms of the Federal Motor Carrier Safety Administration, the
14 Department of Transportation, this is what we followed in terms
15 of our understanding with our provider communities, prohibit --
16 the state is supposed to prohibit a commercial motor vehicle
17 from being operated when it is likely to cause an accident or a
18 breakdown, require the driver to conduct a walk around
19 inspection of the vehicle before driving it to insure that it
20 can be safely operated and require the driver to prepare a
21 driver vehicle and inspection report and require commercial
22 motor vehicles to be inspected at least annually.

23 So this was our assumption when we provided training
24 in the past with our provider community, that this is the
25 state's responsibility. So the question you're asking now is I

1 think what have we as a profession, a long-term care profession
2 done in response to the tragic bus accident to take the
3 responsibility to insure that these requirements that the state
4 is held accountable for by the Federal Government, how the
5 facility, the nursing home or the assisted living facility that
6 is under duress to make a safe decision on whether or not to
7 shelter employees or to evacuate, this is now another level of
8 potential concern in terms of the safety of the bus. And this
9 is in discussion at this point in time, this is why the
10 American Health Care Association and Florida Health Care
11 Association developed this bus safety transport checklist, and
12 it begins with review transportation contracts and agreements.
13 Do the transportation contract agreements/mutual aid agreements
14 hold up? That was not there before, but at this point in time,
15 I cannot say that each nursing home or assisted living
16 administrator would be responsible for what the state is held
17 accountable for at the federal level and at the state level to
18 insure the safety of a private -- for a private carrier that is
19 contracted to provide safe transportation, except we now have
20 guidance to the provider community to make -- put these
21 statements in the contract. But in terms of insuring that,
22 that is, that is problematic.

23 CHAIRWOMAN HIGGINS: Well, I think we will hear later
24 on from FMCSA, but it seems to me that this is an area based on
25 what I'm hearing, with all that I've read to get ready for this

1 hearing, and what I'm hearing from you all today, we have sort
2 of the threshold issue of how do we provide transportation for
3 people with special needs, and the report that -- the DHS
4 review of state plans basically said that most plans do not
5 address evacuations for persons with disabilities.
6 Fundamentally it's just not there. This is as of July of this
7 year. So if we accept that as a fact, that even a year later,
8 the plans really aren't in place, that address these issues,
9 that doesn't even get to the issue that we're really focusing
10 on here today, is that if there were plans for transporting
11 people with disabilities, how do we insure that those plans
12 take account of safety? And how do we insure again that this
13 accident doesn't happen again because in all the planning
14 that's going on, there are assumptions made or the safety
15 question hasn't been asked? And I'm looking to you all to give
16 us guidance about what would really work on the ground, because
17 that's fundamentally where these decisions get made,
18 notwithstanding all the meetings that are going on in
19 Washington. It really is how do people make the best choices
20 possible whether they're in Florida or they're in Texas or
21 anywhere along the Gulf Coast, and I think we should just note
22 for the record, that the Gulf Coast, and the South really has
23 the largest share, it's pretty interesting, nationally of
24 percent of families with disabilities by region. Thirty-one
25 percent of families in this country live in the South who have

1 members with disabilities.

2 So it's a significant problem for the region that
3 some of you are representing, and I don't know whether any of
4 you also care to comment on that, but what we want to come out
5 of this with is recommendations having to do with safety of
6 vehicles used to transportation people with disabilities.

7 MS. POLIVKA-WEST: Could I just suggest that possibly
8 the person who's looking at the disaster plans has not seen the
9 American Health Care Association's disaster preparedness guide
10 because it does have guidance in terms of evacuation decision
11 making and planning, and we may now have the bus transportation
12 checklist that will be added this month, as well.

13 We have done extensive training throughout the
14 country at the American Health Care Association -- American
15 Health Care Association's annual convention in 2005, and now
16 it's planned again in 2006, providing guidance to providers in
17 terms of evacuation decision making or sheltering in place. At
18 the same time, I want to also emphasize that Florida safely
19 evacuated over 30,000 frail elders and persons with
20 disabilities over 2004 and 2005 hurricanes. Over 30,000.
21 That's a minimum estimate in terms of those safe evacuations.

22 We did not have a loss of life, and we are very proud
23 of the fact that the staff and the families of the residents
24 saw through those storms together and working with the local
25 emergency operations center, our relationships with ESF8 did

1 work. We had transportation problems. We termed it our
2 Achilles heel, and it will always be as long as there is not
3 enough transport vehicles, there are not enough transport
4 vehicles to meet the needs based upon a large expansive
5 disaster. That is the problem. At the same time, that does
6 not mean that we are not struggling mightily to insure that
7 decisions are made in the future through redundancy and
8 contracting with the transportation providers, and keeping this
9 discussion alive at the local community and at the state level
10 and now at the Federal level as well.

11 CHAIRWOMAN HIGGINS: My colleague, Ms. Weinstein just
12 is telling me, and I'm going to ask you if you're familiar with
13 this, in response to H-05-2, it's one of our recommendations,
14 FMCSA developed a page on their website titled Safe
15 Transportation of Passengers by Motorcoach. Are any of you
16 aware of the guidelines that have -- and those qualifications?
17 Have you seen those guidelines?

18 (No response.)

19 CHAIRWOMAN HIGGINS: Okay. Maybe FMCSA can make sure
20 that you're aware of those. Again, I think there's a lot out
21 there but it's clear to me that there's just -- we don't have a
22 sufficient communication, notwithstanding all the technology
23 that's available, Blackberries and other things to help people
24 communicate these days, and I just will look to you all for
25 guidance as we formulate findings and recommendations coming

1 out of this accident, about how we can make the job easier for
2 those of you who have to make these decisions.

3 The one issue that came up, and I think you,
4 Ms. Polivka-West may be mentioning this, the -- notwithstanding
5 contracts that were in place, buses got pulled away and then
6 weren't available. Has that -- is your organization or any of
7 your organizations, how is that issue being addressed? You
8 could have the safest transportation available or think you
9 have it available and then it is pulled out from under you.

10 MS. POLIVKA-WEST: Right, and that's what happened in
11 Florida with Hurricane Charlie because we had three large
12 hospitals that had their roofs blown off, and they had to
13 evacuate immediately. And so they took -- they had to
14 commandeer all of the emergency transport, the ambulance
15 transport, and we understood, but at the same time, that meant
16 that we had to -- we worked with our emergency operations
17 center in Tallahassee at the state level to bring ambulances
18 300, 400, 500 miles away, down into the southern part of the
19 state to evacuate, and the, the frail elders, the persons with
20 disabilities who had been evacuated to Orlando, they had to
21 remain in the hallways, in the activities rooms, for several
22 days before they could be transported back to their facilities
23 in St. Pete. So it took a statewide effort, and that was also
24 where American Health Care Association came in and in
25 subsequent hurricanes, they were able to work with other states

1 to -- there were buses that were available, if necessary, to be
2 brought in. This was last year after Hurricane Katrina, that
3 were available if they needed to be brought in across state
4 lines.

5 So we have learned from every hurricane what we had
6 to do, but at the time, that's not to say that if we have a
7 massive, catastrophic hurricane like Katrina, that hits Tampa
8 Bay, we're very concerned. We are doing tabletop exercises
9 with our emergency operations center. We have now a grant
10 pending with the John A. Hartford Foundation for emergency
11 evacuation decision making module development at the facility
12 level, for better planning means, in terms of the individual
13 facilities. So we know that we've got much work to be done.

14 CHAIRWOMAN HIGGINS: The DHS report which cited the
15 problems for people with disabilities, indicated that there
16 were some -- there were really only a handful of states who had
17 best practices in effect who really were ready. I think
18 Florida was one of them. What is being done by any of your
19 organizations to transfer that knowledge so that Texas can
20 learn from Florida, Delaware we heard yesterday seems to have a
21 pretty good effort underway, again notwithstanding all the
22 requirements, there really is that practical how to do it kind
23 of knowledge it seems to me across the board, and particular
24 for this population it is going to be critical.

25 MS. STYRON: I'll handle that question, ma'am. I

1 participated on the special needs review for the nationwide
2 plan review, was brought in by the Office of Civil Rights,
3 Civil Liberties, as a subject matter expert, to review the
4 plans across the country that we were evaluating, and Florida
5 and some other states in the country are further ahead than
6 many of the other states, including states in the Gulf that
7 this directly impacts on a regular basis. Basically what we're
8 doing out of the templates and the lessons learned, out of that
9 review, is transferring that knowledge to the emergency
10 managers and transportation planners across the country, we're
11 doing that through in person training. We're doing that
12 through website sharing, trainings, conferences, workshops, and
13 new guidelines and education series, et cetera, that will be
14 coming out for the planning and response level as well as
15 individual and personal preparedness and education.

16 Department of Homeland Security is heavily engaged in
17 changing the course of what the findings were in the nationwide
18 plan review. It gave the country a baseline as to where the
19 plans really stand, not just in terms of evacuation, but across
20 an all hazards planning environment and every state and local
21 jurisdiction is engaged in making the modifications or changing
22 their plans in terms of special needs and planning for people
23 with disabilities. That much I do know.

24 CHAIRWOMAN HIGGINS: What's the timeline for?

25 MS. STYRON: I don't believe there's been a firmly

1 established timeline to rectify these situations. The problem
2 did not start overnight. It didn't start yesterday. What we
3 have to start with first is establishing some standards that
4 are appropriate for this type of -- handling this type of
5 population and their needs in an emergency, and practicing some
6 prudent man, if you will, some OSHA type safety levels of
7 planning. We can't just expect it to be fixed overnight.

8 There's a myriad of issues aside from transportation
9 and evacuation. There's sheltering. There's meda (ph.)
10 shelters. There's mass care, tracking patients and relocation
11 and recovery before, during and after. It goes on and on, and
12 until there are some standards established at the Federal
13 Government that we can then implement into state and local
14 government planning, we are behind the 8 ball on this.

15 Having said that, we're starting at the local level
16 where the disasters and events occur, so that they handle what
17 happens in their backyard best. You know your backyard best in
18 terms of planning. So at the local and state level, we're
19 really pushing comprehensive planning, inclusive planning on
20 the universal framework. If you're planning for your general
21 population, under that people with disabilities are within that
22 general population. In New Orleans alone before Katrina, there
23 was over 54,000 individuals that have home healthcare patients.
24 54,000. I won't go into the other disability statistics for
25 across the Gulf, but the Gulf region is saturated with

1 different types of disabled populations.

2 So it starts at the local level, looking up to
3 national standards for guidance. That doesn't mean that that's
4 the end all, be all, and what works in one jurisdiction may be
5 appropriate for another and may not be. California is
6 concerned with mudslides, wild fires and earthquakes. So the
7 hazards are very different. The hazard and threat assessments
8 are very different. The National Capital Region has a
9 different take on all of this. So we're working as best we
10 can.

11 CHAIRWOMAN HIGGINS: Are -- the issue in Texas that
12 Ms. Gundling mentioned, where she wasn't even aware that the
13 Texas Building and Procurement Commission had responsibility
14 for emergency planning, is that a problem elsewhere?

15 MS. STYRON: Yes, I would say that that is a problem
16 consistently, and what it speaks to is the lack of integration
17 and inclusive planning. There's a presumption that if you are
18 in a long-term care facility, that you have a plan because
19 there's a requirement for Medicaid and Medicare, and the Joint
20 Commission that you have an emergency evacuation plan. It may
21 not drill down into how is that plan integrated with other
22 Department of Transportation plans immediately in your
23 jurisdiction. How is it coordinated, and not knowing about a
24 procurement board in Texas is not surprising. An access to an
25 asset for a long-term facility, if they haven't made that

1 dialogue and that bridge to investigate it and vice versa, that
2 that bridge of what is available as an asset will never be
3 known. When we look at an emergency support function, aid and
4 the emergency operation center, we are concerned with long-term
5 care facilities as well as hospitals but the hospitals do trump
6 on priority, seemingly for this transportation asset, and the
7 National Disaster Medical System has not been coordinated to
8 address long term or nursing home facilities.

9 So when we're looking at assets of movement and
10 logistics of people, we have to look at these long-term care
11 facilities as well. We've got to include them in the planning
12 process. So basically what we're telling emergency managers
13 now is that they have to pick up the phone and let their
14 fingers do the dialing. They have to know what the licensed
15 facilities are beyond the hospitals and what we're talking
16 about patient census-wise. And we won't even talk about the
17 unlicensed facilities that are ghost care. So that changes
18 your population and demand on your transportation providers.

19 CHAIRWOMAN HIGGINS: Well, at least down in Texas
20 they're requiring plans for unlicensed as well as licensed
21 facilities.

22 MS. STYRON: And what's the enforcement for that? So
23 we have a lot of loopholes. There's a big sieve of loopholes
24 that these providers can actually slip through, not necessarily
25 with malicious intent at all, but there's a lot of other

1 standards they're trying to meet as well, and whether or not
2 the bus is safe or the driver is safe, is yet one more thing
3 they're going to have to be concerned with, and I would be
4 looking at prudent man operation standards and presume that if
5 you're driving your bus to my facility, that you've met some
6 sort of standard of operational safety before you provide that
7 to me, I would hope.

8 CHAIRWOMAN HIGGINS: I think that's the question
9 we're here dealing with today. Just one more question for
10 Ms. Polivka-West, and then I have a question for Mr. Pearce.

11 You mentioned the changes that you made in your
12 policy as a result of this accident in the expectation in terms
13 of what the state is supposed to do in terms of reviewing. Did
14 you include in that or give any thought to the issue of English
15 speaking drivers?

16 MS. POLIVKA-WEST: No, but we will now.

17 CHAIRWOMAN HIGGINS: Thank you. And, I'm sorry,
18 Ms. Styron, you mentioned standards that need to be set. Whose
19 job is it do you believe to set those standards?

20 MS. STYRON: I think it's the joint effort for
21 standards and operations in emergency management, those are
22 standards that are going to be developed by the Undersecretary
23 of Preparedness at the Department of Homeland Security in
24 conjunction with FEMA. This is going to be a joint effort by
25 both of those bodies that govern emergency management and

1 disaster response, especially as it implements to the national
2 response plan and the NIMS, the national integrated incident
3 command type system. We really have to be doing that as a
4 joint effort, and it also buys into the bodies of organizations
5 and membership, the National Emergency Management Association
6 and the International Association on Emergency Managers,
7 they're organization based, membership based that represent
8 emergency managers across the country. We'll be looking at
9 those policies and procedures as they change and standards and
10 recommendations as they come down and are developed, many as a
11 result of the after action reports and lessons documented from
12 Katrina and Rita, but these lessons from Katrina and Rita are
13 not new.

14 CHAIRWOMAN HIGGINS: It's my understanding that DHS
15 has essentially given DOT, the Department of Transportation,
16 the lead on transportation related issues for emergencies.

17 MS. STYRON: I won't speak for Mr. Pearce on that but
18 other than to say in the National Response Plan, the Department
19 of Transportation is the lead on emergency support function 1.
20 It's transportation. It makes sense and logic that the
21 Department of Transportation would be lead in coordinating
22 those efforts and assets.

23 CHAIRWOMAN HIGGINS: Okay. Thank you. Mr. Pearce,
24 the contract that Member Hersman asked you about, you mentioned
25 Louisiana. Is that just a contract for Louisiana?

1 MR. PEARCE: There are many components of the
2 contract that are being developed specifically for the unusual
3 need in South Louisiana, but we have attempted wherever
4 possible to make the contracts useable and suitable for use
5 throughout the Continental United States.

6 CHAIRWOMAN HIGGINS: Okay. Thank you. I have no
7 more questions for this Panel. Are there any other questions
8 of the parties or any of my colleagues?

9 (No response.)

10 CHAIRWOMAN HIGGINS: If not, we will take a short 10
11 minute break. Be back here at 10:30 for the next panel. Thank
12 you.

13 (Off the record.)

14 (On the record.)

15 CHAIRWOMAN HIGGINS: Ms. McMurtry, would you swear in
16 our next panel please.

17 MS. McMURTRY: Yes, ma'am. Panel, Panel 6, as with
18 the other panels, we'll swear you in all at the same time. So
19 Mr. Maulsby, Captain Palmer, Mr. Miller, Mr. Havelaar,
20 Mr. Bridge and Mr. Berszas, would you please raise your right
21 hand.

22 (Whereupon,

23 BILL MAULSBY, CAPT. DAVID PALMER, ROBERT MILLER,

24 RONALD HAVELAAR, DON BRIDGE, JONATHAN BERSZAS

25 were called as witnesses, and having been first duly sworn,

1 were examined and testified as follows:)

2 MS. McMURTRY: Now, Mr. Maulsby, could you -- for the
3 record, could you give us your full name, your title, your
4 company and your business address please?

5 MS. MAULSBY: My name is Bill Maulsby. I'm the Chief
6 Executive Officer of the Bus Bank. We are located at 200 West
7 Adams, Chicago.

8 MS. McMURTRY: And how long have you been in your
9 current position?

10 MR. MAULSBY: I've been in my current position
11 approximately five years, a little over five years.

12 MS. McMURTRY: Okay. And your duties and
13 responsibilities?

14 MS. MAULSBY: As the Chief Executive Officer of the
15 company, I'm responsible for all the operations of the Bus
16 Bank.

17 MS. McMURTRY: Okay. Thank you. Captain Palmer.

18 CAPTAIN PALMER: I'm David L. Palmer, Captain with
19 the Texas Department of Public Safety, 6200 Guadalupe Street in
20 Austin, Texas.

21 MS. McMURTRY: And how long have you been in your
22 current position?

23 CAPTAIN PALMER: Approximately three years.

24 MS. McMURTRY: And your duties and responsibilities
25 are?

1 CAPTAIN PALMER: I'm the Manager of the Motor Carrier
2 Bureau, which encompasses the responsibility of maintaining all
3 of the commercial vehicle enforcement inspection, compliance
4 review and other records, as well as our -- managing our new
5 interim program, compliance review program and training for
6 commercial vehicle enforcement.

7 MS. McMURTRY: Okay. Thank you. Mr. Miller?

8 MR. MILLER: My name is Robert Miller. I'm with the
9 Federal Motor Carrier Safety Administration. I'm currently the
10 Field Administrator of the Eastern Service Center, at 802
11 Cromwell Park Drive, Suite N, in Glen Burnie, Maryland. I've
12 been with the U.S. Department of Transportation for over 24
13 years, and specifically in the Motor Carrier Program for over
14 18 years.

15 MS. McMURTRY: And your duties and responsibilities?

16 MR. MILLER: I'm currently responsible for delivering
17 the safety program, motor carrier safety program in the Eastern
18 Service Center area to include oversight of the MCSAP Program
19 and our Federal Compliance and Enforcement Program.

20 MS. McMURTRY: Okay. Thank you. Mr. Havelaar, could
21 you -- for the record, could you state your name, title,
22 company and business address?

23 MR. HAVELAAR: I'm Ronald Havelaar, and I'm the
24 Division Administrator for the Federal Motor Carrier Safety
25 Administration, Texas Division. It's at 300 East Eighth

1 Street, Austin, Texas. I'm responsible for all compliance and
2 enforcement programs in the State of Texas for the Federal
3 Motor Carrier Safety Administration. I've been in that --
4 worked in motor carrier safety for the USDOT for 22 years.

5 MS. McMURTRY: Thank you, sir. And Mr. Bridge?

6 MR. BRIDGE: My name is Donald Bridge with the State
7 of Connecticut Department of Motor Vehicles. I'm a Sergeant
8 with them. I've been with the Department for about 17 years.
9 We're located at 60 State Street in Wethersfield, Connecticut.
10 I'm currently the President of the Commercial Vehicle Safety
11 Alliance, which is located here in Washington, D.C.

12 MS. McMURTRY: And your duties and responsibilities
13 in both, in both roles?

14 MR. BRIDGE: Both roles, as a Sergeant at the State
15 of Connecticut, I'm responsible for the Motor Carrier Safety
16 Assistance Program. I'm the coordinator with them. And I'm
17 also the Department Training Officer. With CVSA as the
18 President, I work with the executive director to make sure that
19 the Alliance's goals are met.

20 MS. McMURTRY: Okay. Thank you. And, Mr. Berszas?

21 MR. BERSZAS: My name is Jonathan Berszas.

22 MS. McMURTRY: I mean Berszas. I'm sorry.

23 MR. BERSZAS: Berszas. I'm Jonathan Berszas, and I'm
24 the founder of A Great Way To Charter, Tour and Travel, for six
25 years, at 1209 South Main, Suite 420, -- Texas, and my

1 responsibilities are all facets of our company and operations.

2 MS. McMURTRY: And you've been doing that for how
3 long?

4 MR. BERSZAS: Six years.

5 MS. McMURTRY: Six years. Thank you. Member
6 Higgins, the Panel 6 has been sworn and the witnesses are
7 qualified, and I'll turn the question over to Mr. Van Etten and
8 Mr. Kotowski.

9 CHAIRWOMAN HIGGINS: Thank you. Please proceed.

10 MR. KOTOWSKI: Good morning. This discussion will
11 examine global tours and the Bus Bank operation, the State of
12 Texas Education Review, the FMCSA pre-accident compliance
13 review, the FMCSA post-accident compliance review. Also to be
14 addressed will be a discussion including the issues of non-
15 English speaking drivers and regulations regarding bus brokers
16 and emergency exemptions to the Federal Motor Carrier Safety
17 Regulations.

18 We'll begin discussing the Bus Bank and global tours
19 operations.

20 To Mr. Maulsby, could you describe the services that
21 the Bus Bank provides?

22 MR. MAULSBY: The Bus Bank is a group and
23 transportation specialist. What we do is arrange charter bus
24 services all across North America for group and event
25 organizers.

1 MR. KOTOWSKI: And during the hurricane season and
2 the evacuation centering around Hurricane Rita, the FEMA
3 contracted with the Bus Bank for 300 buses. Is that correct?

4 MR. MAULSBY: Not totally correct. But, first, if I
5 may, putting the tragedy aside, and clearly none of us wish
6 that would have happened, but if I could, let me set the
7 context of what happened in September.

8 The Bus Bank actually provided about 275 buses for
9 various lengths of time to the, to the FEMA evacuation and
10 relief effort in the Gulf Coast and Texas. We actually
11 contracted through Carey Groups and Meetings, which was the
12 subcontractor to Landstar, which was the primary contractor to
13 FEMA. We also provided buses and Bus Bank staffing, logistic
14 staffing, at the evacuee center in San Antonio, Texas, at Kelly
15 Air Force Base.

16 During this period, we provided through our bus
17 operators, approximately 275 buses, we conducted approximately
18 900 trips, traveled over 300,000 miles and serviced about
19 40,000 evacuees. We engaged in a little over 90 operators of
20 which Global Limo was one.

21 MR. KOTOWSKI: And what role did Global play in the
22 operation in Louisiana as affiliates to the Bus Bank?

23 MR. MAULSBY: Global provided three chartered buses
24 for the evacuation of New Orleans.

25 MR. KOTOWSKI: And how did they come -- how were they

1 contracted to do that operation in Louisiana?

2 MR. MAULSBY: We had been working with Global since
3 2004, and at that time, we would have done our standard due
4 diligence which includes -- we first check their, their
5 insurance rating, and not just their insurance rating, we check
6 their insurance to make sure they have \$5 million of insurance
7 in force. We also, if they have had a compliance review, we
8 would check their Safestat rating, and they needed to have a
9 satisfactory rating, and needed to maintain that satisfactory
10 rating which they did. And we'd also check their operating
11 authority. All those things were in place. So as a standard
12 operating partner with us, they, they qualified.

13 We also had a history with them. We had done
14 business with them in 2004 and 2005. We had done four trips
15 previous to them working with us on the FEMA evacuation. So
16 again, during the FEMA evacuation, we were called to get as
17 many bus operators as we possibly could to respond to the
18 emergency, and we went to our established network and looked
19 for those bus operators.

20 MR. KOTOWSKI: And what is the Bus Bank's policy in
21 regards to safety of the operators that you provide?

22 MR. MAULSBY: If, if you look onto our website,
23 clearly safety is stated as a number one priority, and it is.
24 Again, what we do is first before we start doing business with
25 an operator, we check to confirm, and they need to confirm to

1 us, that they have \$5 million of insurance in place. They
2 have, you know, an operating authority, a valid operating
3 authority. And if they were to have had a compliance review,
4 that compliance review needs to be a satisfactory rating. If
5 they don't have that, then we won't work with them.

6 MR. KOTOWSKI: And does the bus bank have a procedure
7 or a policy to verify the information that's provided by the
8 motor carriers?

9 MR. MAULSBY: Yes, we do. Clearly if you -- they
10 provide insurance. They have to send us a certificate to
11 confirm that that insurance is in force, and we have those for
12 all the operators we work with.

13 MR. KOTOWSKI: And do you do an on-site or
14 investigation the operations of those motorcoaches?

15 MR. MAULSBY: We make operator visits throughout the
16 year. We, we -- when we do our visits, we review the
17 operation. We're not -- first of all, our due diligence is not
18 a safety due diligence. We do out there and review operations
19 of which, you know, safety is something that we've already
20 checked out because of the federal information that's provided
21 to us. But we look at buses. We step up on buses. We look at
22 operations. We talk to our operators. We understand the
23 number of buses they have, the type of equipment they have, and
24 get to know them and we do this on an ongoing basis. So we
25 start our due diligence, we start a relationship and that

1 relationship continues on an ongoing basis including how they
2 service our customers.

3 MR. KOTOWSKI: And how or why did Bus Bank become in
4 contact with Global?

5 MR. MAULSBY: We had business down in the far Texas
6 area, back in 2004, and as we've continued to expand our
7 operation, we look for operators all across the country. Our
8 value proposition to our customers is the easy way to charter a
9 bus anywhere in North America. So we have customers requiring
10 service of us all across North America.

11 MR. VAN ETEN: And what information did Global
12 specifically provide to the Bus Bank about their operation?

13 MR. MAULSBY: It's my understanding, and I did not do
14 the due diligence at that time obviously, but our standard
15 procedure is this. We would first check their insurance, have
16 them confirm that and have them validate that by us seeing an
17 in force insurance policy -- excuse me -- insurance enforce
18 designation. Then we would also, if they had a compliance
19 review, check that compliance review to make sure they had a
20 satisfactory rating. We would send them a certification
21 packet. That certification packet spells out how the Bus Bank
22 does business and what our requirements are, how they need to
23 live up to various service requirements and obviously safety
24 requirements. And we do that with every operator.

25 At that time we would have -- our standard procedures

1 were to be on the phone with them and do an interview, which we
2 do with many operators, and validate all that information that
3 we need.

4 MR. VAN ETEN: Yes. I'd like to go back just a
5 little bit because I'm a little unclear as to exactly what it
6 is that the Bus Bank does in terms of providing vehicles or
7 carriers to people that would be your customer. Could you
8 explain how that whole operation is put together?

9 MR. MAULSBY: We work with an independent network of
10 operators all across the country. A customer may be in Chicago
11 and needs charter buses in Los Angeles. We'll arrange that for
12 them through out Los Angeles independent operator we work with.
13 A customer may be in London and need a bus in San Francisco or
14 a customer may be in a suburb of Washington and need a bus in
15 Baltimore. So we provide that service. We provide an easy
16 access to the customer and a better experience in arranging the
17 charter bus.

18 MR. VAN ETEN: Okay. So as I understand it, you
19 have some sort of contractual agreements with a number of
20 carriers across the country, and that when a customer calls
21 you, then you arrange the contract and then call this company
22 come provide the service or --

23 MR. MAULSBY: We do all the up front planning, all
24 the logistics, all the planning with the bus operator, and do
25 all the arrangement for our customers. So we, in fact, have

1 relationships with bus operators all across North America.

2 MR. VAN ETTEN: So when you say you do all the
3 arrangements, you're talking about the actual trip itself?

4 MR. MAULSBY: Set up the itinerary, set up the
5 logistics, the interaction with the bus operator, confirm, you
6 know, with who that bus operator is, and we have a working
7 relationship with the operator and understand the equipment
8 they need, that the customer may need and match that need with
9 the operator's capabilities.

10 MR. VAN ETTEN: And then all they do is supply the
11 vehicles and the driver?

12 MR. MAULSBY: They supply the vehicle and the driver,
13 and they complete the, you know, the transportation for the
14 customer.

15 MR. VAN ETTEN: And could you explain a little bit
16 about you say you review the carrier's status, of their safety.
17 Is that on an ongoing, like an annual basis or semi-annual
18 basis or how does that work?

19 MR. MAULSBY: No, it's an ongoing basis. We have,
20 you know, we have staff at the Bus Bank, their job is to review
21 operators all the time. You know, we deal with operators every
22 day. We talk with them. We understand their operations and
23 when it comes to safety, again every operator that works with
24 the Bus Bank first had to go through that initial safety
25 review. Do they have their insurance in place? Can they

1 confirm that to us? If they've had a compliance review, is
2 that compliance review satisfactory. If it's not, then we
3 don't work with them. And then as we work with them, we give
4 them a trip. We put them on a trial. We'll give them one
5 trip. If they do that well, because after every, every trip
6 that we do for a customer, we survey that customer and ask the
7 customer how we did, how we did and our bus operator did. We
8 know, you know, day in and day out how a bus operator performs,
9 and when bus operators don't perform, then we don't use them.
10 But most important, they have to maintain that safety standard
11 up front. And so we interact with them on a consistent basis
12 and because we do thousands of charters, you know, we have a
13 pretty good understanding of what, what good service is, and we
14 know what to look for. And we understand how to match the
15 customer's needs to the operator we work with.

16 MR. VAN ETEN: Thank you.

17 MR. KOTOWSKI: Mr. Maulsby, did the Bus Bank -- what
18 information specifically did the Bus Bank provide -- I'm
19 sorry -- what information did Global provide to the Bus Bank?
20 Did they, in fact, fill out one of those operator packets and
21 submit that to the Bus Bank?

22 MR. MAULSBY: As I looked in our records and tried to
23 understand what we did back in 2004 with them, they received
24 their packet to the best of my understanding, but they -- we
25 did not have a record of them filling it out, which is not

1 unusual. Many bus operators, you know, don't get back with the
2 information. So we follow up with them via phone, and get the
3 information and enter it into our data base. And so we have a
4 knowledge base of who they are and what type of equipment they
5 have. So we have all that information in our database, the
6 type of equipment, the number of buses, number of drivers, what
7 type of business they like to do. Some operators like to work
8 locally. Some operators won't go over the road and so on.

9 MR. KOTOWSKI: And in the FEMA operation that you
10 were involved in, how did the Bus Bank originally become
11 involved in the FEMA work in the Gulf?

12 MR. MAULSBY: We were engaged, as I indicated
13 earlier, by Carey Meetings and Events. They were the
14 subcontractor to Landstar, for the New Orleans evacuation. And
15 so they called us. They specifically called me to see if we
16 would participate to help provide buses for the FEMA evacuation
17 which we did, and that was on August 31st. We also were
18 engaged by Greyhound which was the primary contractor to FEMA
19 in San Antonio, and they in turn again called us because we had
20 a relationship with them. At a later date, FEMA contracted
21 with us directly in San Antonio as we provided those services
22 from Labor Day until mid December last year.

23 MR. KOTOWSKI: Madam Chairman, that concludes our
24 questions from the Panel concerning, concerning Bus Bank
25 Operations. Do we want to continue with the other topics?

1 CHAIRWOMAN HIGGINS: Yes. Ask your questions of all
2 the panel members, and then we will have the parties in turn
3 ask their questions.

4 MR. KOTOWSKI: Okay. To Captain Palmer, on April 10,
5 2002, the Texas Department of Public Safety conducted an
6 educational review of Global Tours and Limos. Could you
7 explain to us that process?

8 CAPTAIN PALMER: Yes, basically an educational
9 contact is used to assess the safety performance of a motor
10 carrier, and then ultimately to provide educational and
11 technical assistance in those safety performance areas where
12 the motor carrier is deficient. In terms of compliance, if the
13 motor carrier can institute management controls that will
14 insure the motor carrier's complying with the applicable
15 Federal Motor Carrier Safety and Hazardous Materials
16 Regulations.

17 Educational contacts don't result in a motor carrier
18 receiving a safety rating. The review process is often used
19 with a new business in the motor carrier industry or with
20 specialized motor carriers that haven't been subject to
21 regulatory audits in the past. And basically what we have
22 today is very similar to a safety audit, a New Entrant Safety
23 Audit.

24 MR. KOTOWSKI: And how was Global selected for that
25 review in 2002?

1 CAPTAIN PALMER: Basically we believe that the
2 individual who ultimately made the decision has since retired,
3 but we believe that during that time, in 2002, the Department
4 of Public Safety was conducting a motorcoach inspection pilot
5 project to determine both the need for and the feasibility of
6 in route bus inspections in the State of Texas.

7 During the same period a citizen's complaint on
8 Global Limo was received in the Department of Motor Carrier's
9 Bureau, and as the Department had not been actively regulating
10 the motorcoach industry by road side inspections or compliant
11 reviews, a decision was made by a senior DPS official to
12 utilize the educational contact process for assessing the
13 safety compliance of Global with the applicable FMCSRs and
14 HMRs.

15 The motorcoach inspection pilot project was completed
16 in March 2003, and results indicated that there was a need for
17 additional regulation of the motorcoach industry in the State
18 of Texas. As a result, the DPS initiated our current bus
19 inspection program in July of 2003 which includes in route
20 terminal and destination inspections of buses as well as
21 compliance reviews of motor carriers.

22 MR. KOTOWSKI: And did the Texas Department of Public
23 Safety make the Federal Motor Carrier Safety Administration
24 aware of the findings of that educational review?

25 CAPTAIN PALMER: Yes, we did. We uploaded, we

1 uploaded the educational review just like we would any other CR
2 and then basically notified them electronically.

3 MR. KOTOWSKI: And did the Texas Department of Public
4 Safety conduct any follow up examinations of Global?

5 CAPTAIN PALMER: We did not conduct a follow up.
6 It's my understanding that -- let's see. In February --
7 February 6 of 2004, FMCSA did conduct a compliance review on
8 Global Limo, which resulted in a satisfactory safety rating.

9 MR. KOTOWSKI: Thank you. To the Federal Motor
10 Carrier Safety Administration. On February 12, 2004, Global
11 underwent a compliance review, and why was Global selected for
12 a compliance review at that time?

13 MR. HAVELAAR: At that time, the Texas Division of
14 Federal Motor Carrier Safety Administration was exercising
15 their safety plan, the NR safety plan. Passenger carriers are
16 of the highest priority, and in our safety plan we had, one of
17 the provisions to review the unrated passenger carriers, and
18 therefore Global came up on that list.

19 MR. KOTOWSKI: And was the FMCSA aware of the Texas
20 Department of Public Safety education review at that particular
21 time?

22 MR. HAVELAAR: Yes, the, the data from the Texas
23 educational contact was uploaded into our data system and so
24 the results of that review were in there electronically. We
25 actually looked at those results just prior to the 2004 review.

1 MR. KOTOWSKI: And were any of Global's vehicles
2 inspected during that compliance review?

3 MR. HAVELAAR: No.

4 MR. KOTOWSKI: Are vehicle inspections required
5 during a compliance review?

6 MR. HAVELAAR: Vehicle inspections are not
7 necessarily required during the compliance review. We analyze
8 the on road performance and if sufficient on road inspections
9 have not been conducted, then we do inspect vehicles as part of
10 the compliance review if vehicles are available and if it's
11 safe to do so.

12 MR. KOTOWSKI: And could you tell us how the previous
13 roadside inspections are incorporated in the compliance review?

14 MR. HAVELAAR: Well, when we do a carrier profile
15 just prior to the review, the results of the on site roadside
16 inspections that have taken place prior to the review are
17 evaluated and those drivers and vehicles are selected for
18 further review during the compliance review, and the results of
19 those inspections are fed into the safety rating methodology.

20 MR. KOTOWSKI: And during that compliance review, the
21 FMCSA made recommendations to Global as part of that process.
22 Do you have a program to monitor whether or not a motor carrier
23 complies with those recommendations?

24 MR. HAVELAAR: The ultimate responsibility for
25 compliance, of course, is on the motor carrier. We establish

1 the regulatory framework that addresses safety, and then we
2 make that assessment. Our monitoring of their activities at
3 the completion of the compliance review, whether they're --
4 irregardless of what the safety rating is, we issue
5 recommendations to the carrier to address certain deficiencies
6 that we might have identified. That is monitored then through
7 our safety statistics system, through roadside inspections.

8 MR. KOTOWSKI: And did the FMCSA schedule a revisit
9 of Global based on that first compliance review?

10 MR. HAVELAAR: No, they were not specifically
11 scheduled for a revisit.

12 MR. KOTOWSKI: And at the time of the accident, what
13 Safestat rating was issued to Global?

14 MR. HAVELAAR: Well, Safestat doesn't actually issue
15 a rating, but they were a category E carrier which is a motor
16 carrier that has one of the safety evaluation areas that
17 exceeded the threshold, and that was in the driver area.

18 MR. KOTOWSKI: And at that particular time, the time
19 of the accident, what was Global's driver out-of-service rate?

20 MR. HAVELAAR: Their driver out-of-service rate at
21 the time of the 2005 review?

22 MR. KOTOWSKI: Of the post-accident?

23 MR. HAVELAAR: That -- their driver out-of-service
24 rate at that time was 50 percent.

25 MR. KOTOWSKI: Okay. Can we have the slide please?

1 Following the Wilmer accident, the Federal Motor Carrier Safety
2 Administration conducted a compliance review of Global, during
3 which a number of driver violations were identified. Why were
4 the findings during this review different from the review in
5 February of 2004?

6 MR. HAVELAAR: The review in 2004, came approximately
7 two years following the DPS' educational contact. Following
8 the educational contact by the DPS, the carrier made use of
9 safety consultant, who was familiar with our processes and our
10 procedures and was able to establish the programs within the
11 carrier's operation that would result in a satisfactory rating
12 when we went in in 2004.

13 Following the 2004 review, the carrier diminished the
14 use of the safety consultant and there was a progressive
15 degeneration of the safety posture of the carrier.

16 MR. KOTOWSKI: What was Global's out-of-service rate
17 at the time of the accident review?

18 MR. HAVELAAR: The vehicle out-of-service rate,
19 Mr. Kotowski, you're saying the vehicle out-of-service rate?

20 MR. KOTOWSKI: Yeah, Global's out-of-service rate at
21 the time of that review.

22 MR. HAVELAAR: It was 0 percent.

23 MR. KOTOWSKI: And why were vehicles selected for the
24 compliance review, the post-fire compliance review?

25 MR. HAVELAAR: Well, it was -- we recognized the

1 extreme circumstances that we were dealing with at that time.
2 The evacuation of one of the largest cities in the United
3 States, the fourth largest hurricane to hit the United States,
4 and the horrific events following the crash, and we felt it was
5 prudent on us to do 100 percent sampling of the company.

6 MR. KOTOWSKI: And did the driver of the bus have a
7 valid CDL?

8 MR. HAVELAAR: Yes, the driver had a valid licensa
9 federale.

10 MR. KOTOWSKI: And how significant was Global's
11 failure to have a drug and alcohol program and failure to test
12 their drivers?

13 MR. HAVELAAR: Well, our review actually indicated
14 that the carrier did have a drug and alcohol program but we
15 found several deficiencies within that program, one of this
16 they used drivers prior to receiving negative results of the
17 pre-employment drug tests, and the results of those violations
18 then impacted the safety rating of the company.

19 MR. KOTOWSKI: Did they have a random drug/alcohol
20 testing program?

21 MR. HAVELAAR: Yes, they had a random alcohol and
22 drug testing program.

23 MR. KOTOWSKI: And that was in place at the time of
24 this compliance review?

25 MR. HAVELAAR: That's my understanding, yes.

1 MR. KOTOWSKI: And on October 7, 2005, the FMCSA
2 issued an out-of-service order to Global. Does this order
3 apply to interstate travel and intrastate travel?

4 MR. HAVELAAR: Yes, the out-of-service order we
5 issued applies to both inter and intrastate transportation.

6 MR. VAN ETEN: I'd like to just go back to Captain
7 Palmer for just a minute please, and go back to the educational
8 review. You say that you do an educational review and you
9 review certain aspects of a company's operation, their safety
10 and their paperwork and their maintenance and that sort of
11 thing. And then you don't issue a rating. What would happen
12 if or what would happen when a company is found to be -- that
13 their violations or their standards are not met, they're so
14 egregious that you would not allow them to operate? I mean
15 first of all, has that ever happened, and if it did, what would
16 you do at that time?

17 CAPTAIN PALMER: You're saying that as a result if we
18 went in to do an education contact, and we had found violations
19 like that. Is that basically what you're asking?

20 MR. VAN ETEN: Correct. If I'm a carrier and I'm
21 just a new carrier, and you come to my company and you find
22 that I just don't have the programs in place to be a safe
23 operator, what would be the result of that?

24 CAPTAIN PALMER: Basically if you're referring --
25 let's just move away from educational contact because that's

1 not something we generally do anymore since there's the --
2 since FMCSA created the New Entrant Safety Assurance Program,
3 but if we went in on a New Entrant Safety Audit, for example,
4 on a new carrier, which does basically the same thing as what
5 the educational contact did when we went in on Global Limo, in
6 the case of a New Entrant Safety Audit, there are certain
7 items, there's about I think seven of them. I can't remember
8 what they are, but there's a list of items that are considered
9 serious enough that at that point, the safety audit turns
10 into -- well, the safety audit will stop, and it'll be
11 converted into a compliance review, and then once it turns into
12 a compliance review, you go through and you check all the
13 things that you would check in compliance review, and that
14 would result in a rating and possibly enforcement action
15 depending on the severity of the violations.

16 MR. VAN ETEN: Thank you. Mr. Havelaar, you
17 indicated that the 2004 compliance review of Global, as I
18 understood your statement, was not necessarily base or was not
19 based on the educational information that was uploaded to the
20 FMCSA from the Texas educational contact. Would there ever be
21 a time when a state would have conducted an educational review
22 or even a New Entrant review that might trigger something,
23 further action by FMCSA?

24 MR. HAVELAAR: Well, the educational contacts were a
25 very rare event, and I can't say that educational contact or

1 New Entrant review by themselves would trigger a further follow
2 up from us. We monitor the carrier's performance through the
3 Safestat System which is the on road performance, and many of
4 our follow up reviews are a result of complaints also.

5 MR. VAN ETEN: Thank you.

6 MR. KOTOWSKI: Captain Palmer, does Texas now have an
7 intrastate compliance review program?

8 CAPTAIN PALMER: Yes, sir, we do.

9 MR. KOTOWSKI: And could you explain that program to
10 us?

11 CAPTAIN PALMER: Basically it's, it's pretty much a
12 mirror of the federal compliance review program with a couple
13 of minor exceptions as to the timeline, and really the main
14 difference is that four our intrastate program, we basically
15 have -- we wait until the 76th day before the final rating is
16 issued on a conditional or unsatisfactory regular carrier for
17 lack of a better term, and then we, we issue that on the 61st
18 day for passenger and hazardous material carriers, and that's
19 basically 15 days longer than each time period for a federal
20 CR. We use the same, the same CAPRI Program (ph.) that's
21 provided by FMCSA, the same uniform fine assessment for
22 determining penalties. Quite frankly, we've, you know, used
23 the basic outline of most of the federal letters. So it's very
24 similar.

25 MR. KOTOWSKI: And does your intrastate compliance

1 review program require an inspection of the motor carrier's
2 vehicles?

3 CAPTAIN PALMER: It does only if there is an
4 insufficient number of vehicles in the history of that carrier
5 to determine basically whether or not they meet the, the
6 criteria in the Federal Field Training Manual, they call the
7 FFTM, in our Compliance Review and Enforcement Policy Manual.
8 What we do is we -- when we select a carrier, we, we create a
9 packet for the investigator that has all of the information
10 that they need about that carrier including past roadside
11 inspections, past compliance reviews, anything else, and if
12 there are enough in there, then generally the investigator will
13 use that information. If there's not enough, then -- and if
14 the vehicles are available at the carrier, then we will do
15 inspections on those vehicles.

16 MR. KOTOWSKI: And how are carriers selected for the
17 intrastate compliance review?

18 CAPTAIN PALMER: Well, there's several methods.
19 We -- basically in our administrative code, we have the Texas
20 Administrative Code which is Chapter 4, covers all of our
21 commercial vehicle enforcement. Basically there's a listing,
22 and what we look at is we review citizen complaints, officer
23 complaints, fatality accidents, hazardous materials incidents.
24 We have what we call -- it's our -- it's a much I guess less
25 extensive Safestat list. We call it our Texas Safestat list,

1 and basically that's just all the carriers -- it's just one to
2 whatever the total number is, 20, 30 some thousand carriers,
3 that is the -- it's basically a minimum of three inspections
4 with -- where the combined out-of-service driver and vehicle
5 out-of-service rate is 15 percent or more, and we just -- we
6 take it off of that list, depending on the geographical
7 location of the carrier and the request for compliance reviews
8 from that location.

9 MR. KOTOWSKI: And does the State of Texas issue a
10 safety rating of the carrier?

11 CAPTAIN PALMER: Yes, sir, we do. We use -- like I
12 stated before, we use the CAPRI Program to -- and we just input
13 all the appropriate information and, and that's how we
14 determine what their safety rating is. That's the primary
15 method. By our rule, it's not the only method. We could use
16 other methods, but that's the primary way we do that.

17 MR. KOTOWSKI: And what are the ratings that can be
18 issued?

19 CAPTAIN PALMER: They can be unsatisfactory,
20 conditional and satisfactory, same as the Federal.

21 MR. KOTOWSKI: And does the program authorize the
22 State of Texas to place the carrier out of service?

23 CAPTAIN PALMER: Yes, it absolutely does, and I'm not
24 sure exactly what the number we have right now, but I believe
25 we've put -- since the inception of our program on March 9,

1 2004, is when it was established, first effective, there's
2 over -- there's near 30 carriers that have been placed out of
3 service for receiving an unsatisfactory rating and for failing
4 to improve that safety rating within the allotted time.

5 MR. KOTOWSKI: And do you have an estimate of how
6 many intrastate compliance reviews have been conducted since
7 the inception of the program?

8 CAPTAIN PALMER: No, I don't.

9 MR. KOTOWSKI: Okay. To the FMCSA. According to the
10 Federal Motor Carrier Safety Regulations, the compliance review
11 is designed to insure compliance with the safety fitness
12 standard. Would you describe the safety fitness standard?

13 MR. MILLER: Yes. The safety fitness standard is
14 found in 49 C.F.R. 385.5, and it speaks to the motor carrier
15 putting management practices, safety management practices in
16 place and procedures in place, to assure effective oversight of
17 the safety -- of their requirements to comply with the safety
18 regulations. Specifically to avoid violations in driver
19 qualifications, hours of service, maintenance requirements,
20 hazardous materials regulations, the whole gambit of the
21 regulatory criteria.

22 MR. KOTOWSKI: And what is the purpose of the
23 compliance review?

24 MR. MILLER: The compliance review is designed to do
25 a comprehensive review of the motor carriers overall safety

1 management practices, to insure that they have those systems in
2 place, to insure that the vehicles and drivers are in proper
3 compliance with the safety regulations, the equipment's' in
4 good standing. It's basically as process in which, through a
5 review of both roadside performance and their safety management
6 practices in place, determining their overall safety management
7 posture.

8 MR. KOTOWSKI: And could you briefly explain the
9 compliance review program, the process?

10 MR. MILLER: As Mr. Havelaar indicated earlier, prior
11 to a compliance review, the investigator would run what's
12 called a company profile, which provides a significant amount
13 of information with regards to the prior roadside inspections,
14 whether that be driver or vehicle conducted roadside
15 inspections, and any prior contacts through the compliance
16 review or safety audit process that the agency uses. Using
17 that information, the investigator makes determines as to which
18 drivers and vehicles they're going to sample when they go in to
19 conduct a review of the motor carrier's operation. Once
20 they're in place at the carrier's place of business, they go
21 through a process of reviewing the paperwork associated with
22 driver qualification processes, drug testing processes,
23 maintenance, inspection and repair processes, if hazardous
24 materials are involved, those aspects of the program as well
25 and, of course, hours of service of the drivers.

1 MR. KOTOWSKI: And are all drivers and all vehicles
2 examined in the compliance review process?

3 MR. MILLER: No. The agency actually uses a sampling
4 technique associated with the size of the operation. Based on
5 the size of the operation, our Field Operations Training Manual
6 determines or instructs the investigator to make specific
7 sampling based on the size of the operation. And that again,
8 that sampling is targeted at those individuals, drivers or
9 vehicles that were engaged in non-compliant activity during
10 roadside inspections.

11 MR. KOTOWSKI: And during the compliance review
12 process, are all segments of the Federal Motor Carrier Safety
13 Regulations examined?

14 MR. MILLER: In a standard compliance review, yes.
15 In certain instances where we have been to a motor carrier
16 recently, and this would be a follow up compliance review,
17 within the last 12 months, we may do a focused review on just
18 those specific insufficient areas, but a compliance review in
19 general would be a comprehensive review of all aspects of the
20 regulations.

21 MR. KOTOWSKI: And are all of those regulations
22 considered as far as the determination of a motor carrier's
23 overall safety rating?

24 MR. MILLER: The regulations themselves, the
25 violations of the regulations themselves as noted in the

1 compliance review, are used in the safety rating process. Not
2 all regulations are weighted equally. The agency has
3 determined certain regulations to be critical or acute
4 depending on their relative risks of crash. Violation of those
5 particular regulations would be a crash risk.

6 MR. KOTOWSKI: And could you describe a critical
7 violation or define a critical violation?

8 MR. MILLER: A critical violation would be one that
9 demonstrates that the motor carrier has not established
10 adequate safety management protocols at their place of
11 business, to insure that the continuation of -- that the
12 violation would not continue in the future. Essentially what
13 we're talking about is a violation of the hours of service for
14 example. Do they have proper management practices in place to
15 oversee the driver's operations, to insure that they're not
16 violating the hours limits on the road.

17 MR. KOTOWSKI: And how is that measured?

18 MR. MILLER: That is measured at a 10 percent
19 violation rate.

20 MR. KOTOWSKI: And could you describe what an acute
21 violation is?

22 MR. MILLER: And acute violation would be one which
23 the -- is so severe that the motor carrier should take
24 immediate action to remove that safety problem. For example,
25 using a driver who has tested positive for drugs or alcohol at

1 a certain point in time.

2 MR. KOTOWSKI: Are all regulations classified as
3 acute or critical?

4 MR. MILLER: No, sir, they are not.

5 MR. KOTOWSKI: And so those other violations would be
6 considered an unrated violation?

7 MR. MILLER: The agency believes that all
8 regulations, safety regulations are important. As I stated, we
9 applied a criteria to determine the relative risk of each and
10 every violation in the regulations to assess critical or acute
11 nature of those violations. Those specific violations were
12 determined to have the most severe risk of potential crashes.
13 That's why they received those particular categorical status.

14 MR. KOTOWSKI: Okay. And the current critical and
15 acute violations that are examined at the present time, when
16 were they last issued or reviewed?

17 MR. MILLER: They were originally promulgated in
18 1997. The last update to them was in August of 2005.

19 MR. KOTOWSKI: And what criteria does the FMCSA use
20 in determining if a regulation is to be classified as non-
21 rated, critical or acute?

22 MR. MILLER: Well, when originally promulgated, the
23 agency used the best judgment of our field investigative staff
24 and our state enforcement partners in making the determination
25 of whether or not a regulation should be determined critical or

1 acute. Since that time, as we've moved forward over time, the
2 agency has embarked on an effort to conduct a violation
3 severity study to assure that we're applying the right approach
4 to the risk assessment process.

5 MR. KOTOWSKI: And how is the vehicle out-of-service
6 rate used in the compliance review process?

7 MR. MILLER: The vehicle out-of-service rate actually
8 does have a direct impact on the safety fitness determination
9 issued at the end of a compliance review. The -- as
10 Mr. Havelaar indicated, we look at the previous 12 months of
11 inspections actually performed on the motor carrier at the
12 roadside, using our sampling technique. If the out-of-service
13 rate for the vehicle is over 34 percent, 34 percent or greater,
14 that particular factor gets an immediate conditional rating,
15 coupled with our review of their inspection, repair,
16 maintenance practices, if we find a critical or an acute
17 violation within that segment of the regulations, the
18 combination of the on road performance and the safety
19 management practices, would result in an unsatisfactory rating
20 in Factor 4.

21 MR. KOTOWSKI: And why does the compliance review
22 process only consider vehicle inspections or vehicle out of
23 service that occurred in interstate operations and not
24 intrastate operations?

25 MR. MILLER: In 2002, the agency recognized a concern

1 regarding our overall jurisdiction over intrastate operations,
2 and thus the data associated with that particular operation.
3 We made a policy decision at that time not to include it
4 intrastate inspections in the process. We then sought specific
5 authority under SAFETEA-LU and received that authority in
6 August of 2005.

7 MR. KOTOWSKI: And during the review process,
8 accidents are considered as well now since SAFETEA-LU, of both
9 interstate and intrastate?

10 MR. MILLER: At this time we have not fully
11 implemented the SAFETEA-LU provision. We are looking at, given
12 the impact of the use of that data, on the safety fitness
13 determination and process, we were -- we have been considering
14 whether or not rulemaking would be the proper implementation
15 strategy versus policy. Therefore, we are under discussion
16 even as we speak as to the best way to implement that
17 particular provision.

18 MR. KOTOWSKI: Do you have an estimate of when that
19 decision will be made or when it will be implemented?

20 MR. MILLER: I don't have a specific time estimate,
21 but we can certainly provide that for the record later.

22 MR. KOTOWSKI: And in addition to accidents where
23 considered, where primarily considered, were accidents that the
24 carrier reports or is there a way of other review to insure
25 that all accidents are included in the compliance review?

1 MR. MILLER: I'm sorry. Could you repeat the
2 question again, sir?

3 MR. KOTOWSKI: I said in the review process, in the
4 compliance review process, we consider -- you consider
5 accidents. Are they based upon what the carrier reports or are
6 they based on state reports or accident reports that the agency
7 is aware of?

8 MR. MILLER: Yes, it's actually a combination
9 thereof. Essentially we review the accidents that are reported
10 to -- by the states to our system, the motor carrier management
11 information system. Those crashes in concert with any crash
12 information we may find during the compliance reprocess, for
13 example, the carrier may have just recently been involved in a
14 crash, maybe a week or two prior, that crash record may be in
15 their files. We would include that in our calculation of the
16 crash rate.

17 MR. KOTOWSKI: And do you review a motor carrier's
18 insurance claims?

19 MR. MILLER: Yes, we do.

20 MR. KOTOWSKI: And does the FMCSA utilize state
21 investigative or compliance review data when conducting a
22 compliance review?

23 MR. MILLER: Yes, we do. All the data that is
24 uploaded by the states through our motor carrier management
25 information system is utilized in the conduct of the compliance

1 review.

2 MR. KOTOWSKI: And, for instance, how would the Texas
3 education review be integrated into a compliance review or now
4 that Texas has a compliance review process itself, how would
5 their compliance review be integrated into the federal
6 compliance review process?

7 MR. MILLER: Well, that particular data would be
8 entered into the motor carrier management information system,
9 and thus because part of the carrier's overall record if it
10 were an interstate motor carrier. That data would be reviewed
11 in preparation for the compliance review. The investigator
12 going into the company would take a look at the results of that
13 prior compliance review to look for specific -- as well as the
14 roadside performance data I spoke to earlier, I'd look at
15 drivers or vehicles that were noted as being deficient in the
16 prior review to see whether or not the carrier has taken action
17 to protect that particular violation or those violations.

18 In addition, they would use the information to
19 determine whether the motor carrier has improved in those
20 particular non-compliant areas.

21 MR. KOTOWSKI: And how is a driver out-of-service
22 rate utilized in the compliance review process?

23 MR. MILLER: The driver out-of-service information is
24 utilized primarily in the identification of drivers who have
25 demonstrated poor safety performance on the roadside and thus

1 targeted for review as sampling during the compliance review
2 process at this time.

3 MR. KOTOWSKI: Why isn't the drivers out-of-service
4 rate considered in the same fashion or given the same weight as
5 a vehicle driver -- as a vehicle out-of-service rate is in the
6 compliance review?

7 MR. MILLER: The agency at the time we promulgated
8 the safety fitness determination process, the driver out-of-
9 service rate information was just not sufficient enough to make
10 an accurate or a detailed assessment of their safety
11 performance in an area. As time has improved, the driver out-
12 of-service rate is becoming more stable, as far as being
13 reliable information. The agency is strongly considering the
14 use of driver out-of-service rate for future safety fitness
15 determination processes.

16 MR. KOTOWSKI: And when you say that it's considering
17 utilizing the driver out-of-service rate, is that part of a
18 strategic plan or is that something that's, that's -- has a
19 timeline of its own?

20 MR. MILLER: The agency is looking at a comprehensive
21 review of all of our safety enforcement -- compliance and
22 enforcement oversight processes. As part of that, we are
23 looking at the safety fitness determination process. We -- our
24 goal is to develop a data driven safety fitness determination
25 process that would include such things as the vehicle out-of-

1 service rate, the driver out-of-service rate, the actual crash
2 experience of the carrier on the roadside, and indeed couple
3 that process, if you will, from the on site specific compliance
4 review process.

5 MR. KOTOWSKI: And if a driver is operating in
6 interstate commerce, and he's under the age of 21, and stopped
7 in the roadside inspection, this would constitute an out-of-
8 service violation. On the compliance review, it is a non-rated
9 offense under the qualifications of drivers as identified by
10 the C.F.R. Part 391.11(b), and a non-English speaking driver is
11 also considered to be an out-of-service violation. A driver
12 operating with a false log is a roadside out-of-service
13 violation and is considered as a critical violation in a
14 compliance review. Why is a violation that's identified as
15 being so egregious, that is constitutes an out-of-service
16 violation at the roadside, but yet it is not rated in the
17 compliance review?

18 MR. MILLER: The roadside out-of-service criteria in
19 the compliance review processes are two separate and distinct
20 processes. The out-of-service criteria provides guidance to
21 roadside inspectors to take immediate action to effect safety
22 at the time of the inspection. The compliance review process
23 takes a more comprehensive review of the carrier's overall
24 management practices, the differential between whether or not
25 it is an out-of-service criteria versus the critical or acute

1 violation, while that is a very good question and that will
2 become part of that violation severity study that we are
3 embarking on now.

4 MR. KOTOWSKI: How is a foreign driver who operates
5 with a U.S. company, from Mexico or Canada, and drives a -- and
6 drives for a U.S. carrier, I'm sorry, how is he evaluated in
7 the compliance review process?

8 MR. MILLER: Foreign based drivers are evaluated just
9 the same as we would with a U.S. based driver.

10 MR. KOTOWSKI: If a commercial driver's license or
11 its equivalent is issued in a foreign country, other than
12 Mexico or Canada, is it valid for use in this country to
13 operate a commercial motor vehicle?

14 MR. MILLER: Yes, it is.

15 MR. KOTOWSKI: And is there a process or a review
16 process that the FMCSA uses to review commercial driver's
17 licenses from other countries to make sure that they meet the
18 American standards or U.S. standards?

19 MR. MILLER: Yes. When the reciprocity agreements
20 were reached between Canada, Mexico and the U.S. with regards
21 to commercial driver's licensees, those assessments were made
22 to insure that each of the three neighboring countries use
23 similar processes to properly qualify drivers in the licensing
24 practices. With regards to reviewing their driver's license
25 information, we have reciprocal agreements as well to actually

1 access the driver's record to determine whether or not the
2 Canadian or Mexican driver does have a valid active CDL with
3 the proper endorsements and restrictions as necessary.

4 MR. KOTOWSKI: And what are the United States, as
5 compared to Mexico, in the area of the medical certification?

6 MR. MILLER: During that evaluation of the
7 reciprocity agreements, the agency did an evaluation of the
8 medical standards in both Canada and Mexico. One of the things
9 that Canada and Mexico does -- do, is they actually apply the
10 medical standards at the time of licensing, and during that
11 reciprocal process, we reviewed those medical standards and
12 found them to be equivalent with the, with the U.S. standards.

13 MR. KOTOWSKI: And was the driver in the Wilmer case
14 in violation of those medical standards?

15 MR. MILLER: Not to my knowledge.

16 MR. KOTOWSKI: Under the highway appropriation bill,
17 SAFETEA-LU, there is a provision prohibiting the inspection of
18 passenger carrying vehicles en route to a destination and
19 cannot be stopped unless a serious violation is observed. This
20 is obviously going to reduce the number of inspections
21 available for review. How will this new requirement affect the
22 vehicle inspection section of the compliance review as it
23 relates to passenger carrying vehicles?

24 MR. MILLER: Well, actually, the SAFETEA-LU provision
25 will require some states to modify their operational procedures

1 with regards to the conduct of passenger carrier inspections.
2 However, the agency has noted over a 30 percent increase in the
3 number of passenger carrier inspections, motorcoach inspections
4 over the last -- since SAFETEA-LU was issued. So based on that
5 information, I don't know that the provision has had any
6 negative impact on our ability to conduct roadside inspections
7 on motorcoaches in operation.

8 MR. KOTOWSKI: On April 26, 2006, the Office of the
9 Inspector General issued an audit report addressing significant
10 improvements in the motor carrier safety program since 1999.
11 But loopholes for repeat violators need closing. The report
12 focused on repeat offenders escaping maximum fines because of
13 the delay in implementing the OIG recommendations from 1999.
14 The FMCSA response was that they will maintain discretion on
15 all violations and indicated it would identify specific
16 approaches to implement the OIG recommendations. Has the FMCSA
17 developed a policy and a plan to address the OIG
18 recommendations?

19 MR. MILLER: Yes, the agency has recently, in fact,
20 on April 21 of this past year -- of this year, has issued a
21 response to the OIG, and we do have a plan in place with
22 implementation expected in some -- before the summer of 2007.

23 MR. KOTOWSKI: To Captain Palmer --

24 MR. VAN ETEN: I'm sorry. Just a point of
25 clarification, Mr. Miller, and I want to go way back to the

1 acute and critical violations. As I understand it, the acute
2 and critical violations are those violations which are used in
3 determining the carrier's overall rating. Is that correct?

4 MR. MILLER: That is correct, sir.

5 MR. VAN ETEN: And then we have a number of other
6 regulations that are not classified as either one of those and
7 therefore are not used in the carrier's overall rating. How
8 does the agency deal with those particular sections when
9 violations are found?

10 MR. MILLER: As I stated, every regulation, safety
11 regulation currently in place is important. Whether or not
12 that particular regulation has an impact on the rating or not,
13 does not limit our ability to take enforcement action as
14 necessary if we believe enforcement would remedy the situation
15 with the motor carrier. In other words, not just for purposes
16 of punitive, you know, punishment, but as a tool in which to
17 remediate the deficient behavior.

18 MR. VAN ETEN: Okay. And that remediation or that
19 addressing of those particular deficiencies would be either
20 through a fine or --

21 MR. MILLER: Yes.

22 MR. VAN ETEN: -- something like that?

23 MR. MILLER: Yes, sir.

24 MR. VAN ETEN: Okay. Thank you.

25 MR. KOTOWSKI: To Captain Palmer. What is the Texas

1 DPS policy on drivers who cannot speak English particularly to
2 the roadside inspectors?

3 CAPTAIN PALMER: It's a little lengthy but I'll try
4 to go over a little bit, and if you would like a copy of it,
5 I'm more than welcome to give you one.

6 Basically our policy which was issued by the Chief of
7 our -- the Texas Highway Patrol Division in DPS, was issued
8 March 30 of '05, and it basically gives a little history, you
9 know, about the English language requirement being originally
10 established by the Interstate Commerce Commission in 1936, and
11 when promulgated at that time, the ICC explained that this
12 regulation was not intended to be enforced at roadside. The
13 ICC specifically stated that it was the motor carrier
14 employer's responsibility to evaluate the driver's efficiency
15 in the English language as the employer was presumed to know
16 what communications fields were necessary for the type of cargo
17 handled or route taken, and the public contact requirement.

18 In July of 2003, the Federal Motor Carrier Safety
19 Administration again reviewed the English language
20 requirements, in 49 C.F.R. Part 391.11(b)(2), and determined
21 the following: "As written, the regulation sets for the
22 qualification of drivers of CMVs to read and speak the English
23 language and allows each motor carrier the flexibility to
24 determine the extent of proficiency needed to enforce it. It
25 provides carriers with the flexibility and to individually

1 determine whether a driver has communication skills and English
2 fluency to operate safely on the highway." Then it says, "See
3 68 F.R. 43889-43891." "Clearly the FMCSA continues to believe
4 that this regulation is not intended to be enforced roadside
5 but rather through the compliance review process with the
6 employer motor carrier. Based on the FMCSA interpretation of
7 Part 391.11(b)(2), the following enforcement policies will be
8 in effect." And basically for CMVs operating interstate
9 commerce, the Department will not make custody arrests or issue
10 citations for a violation of 391.11(b)(2). If the driver has
11 insufficient command of the English language and highway safety
12 is compromised, then that driver may be issued a warning for
13 the violation of that section and placed out of service in
14 accordance with the North American standard driver out-of-
15 service criteria that became effective on 4/1 of '05.

16 DPS employees that placed that driver out of service
17 for that violation are instructed to notify their first line
18 supervisor of the action, and they'll also -- the DPS employee
19 is also required to submit a compliance review complaint form
20 to the Motor Carrier Bureau requesting that a compliance review
21 be initiated against the employer motor carrier of the driver.
22 If the compliance review determines non-compliance with 49
23 C.F.R. 391.11(b)(2), by the employer motor carrier, then
24 appropriate enforcement action may be initiated against the
25 motor carrier by the Motor Carrier Bureau, and it's a similar

1 -- that same administrative penalty process.

2 CMVs operated in intrastate commerce, it's a little
3 different. Title 37, Texas Administrative Code, Section
4 4.12(b)(5) provides that 49 C.F.R. 391.11(b)(2), has not been
5 adopted for intrastate drivers. Therefore, no enforcement or
6 out-of-service action shall be initiated under Part
7 391.11(b)(2) for intrastate drivers. Compliance reviews
8 conducted on intrastate motor carriers shall not include any
9 enforcement action for violations of that section. And
10 obviously our intrastate rules have been a bit different.

11 MR. KOTOWSKI: Okay. Thank you. To the CVSA,
12 Commercial Vehicle Safety Alliance. Does the CVSA support the
13 non-English speaking driver provisions?

14 MR. BRIDGE: The Commercial Vehicle Safety Alliance
15 supports the findings of the Land Transportation Standards
16 Subcommittee that was in the furtherance of Articles 906 and
17 913.5(a)(i) of the North American Free Trade Agreement which
18 passed a resolution regarding language proficiency. The
19 resolution states in part that in recognition of the three
20 countries' language differences, it is the responsibility of
21 the driver and the motor carrier to be able to communicate in
22 the country in which the driver and/or the carrier is operating
23 so that safety is not compromised.

24 In Canada, that has manifested itself into a policy
25 resolution enacted in January 2003, by the Canadian Council of

1 Motor Transport Administrators which replicates the exact
2 statement. The out-of-service criteria which Captain Palmer
3 already alluded to, which was put into the North American
4 Standard Out-of-Service Criteria, taking effect on April 1 of
5 2005, reads as follows: that in recognition of the three, and
6 that would be the NAFTA countries, language differences, it is
7 the responsibility of the driver and the motor carrier, to be
8 able to communicate in the country in which the driver/carrier
9 is operating so that safety is not compromised. If the
10 driver's unable to communicate sufficiently to understand in
11 response to official inquiries and directions, the driver's
12 placed out of service.

13 MR. KOTOWSKI: And is the North American out-of-
14 service policy a uniform policy that is expected to be followed
15 by all member agencies?

16 MR. BRIDGE: The purpose of the North American
17 Standard Out-of-Service Criteria is to identify violations that
18 render the commercial vehicle operator unqualified, unqualified
19 to drive or out of service. The necessity for all enforcement
20 personnel to implement and adhere to these standards and this
21 is a policy statement, which is right in the document, (1)a
22 matter of law is (2) perceived as necessary by the society we
23 are charged with protecting, and (3) a professional obligation
24 if substantial enhancement and safety of commercial motor
25 vehicle operators to be achieved.

1 The out-of-service criteria is a guide to assist law
2 enforcement personnel in the furthering of uniformity and
3 reciprocity in commercial vehicle safety, inspections across
4 North America and is followed except where state or provincial
5 and federal laws preclude enforcement of the named item.

6 MR. KOTOWSKI: And has the FMCSA -- has the CVSA
7 addressed the issue with states that are not enforcing this
8 particular out-of-service section?

9 MR. BRIDGE: As previously mentioned, this out-of-
10 service criteria is a guide for enforcement of personnel and
11 it's used to promote uniformity and reciprocity throughout
12 North America.

13 MR. KOTOWSKI: Okay. How does the non-English
14 speaking driver present a hazard to the roadside inspector?

15 MR. BRIDGE: Commercial drivers who can't adequately
16 communicate with roadside inspectors can present hazards to the
17 roadside inspector. While conducting roadside inspections,
18 officer issue commands to drivers and review documents in order
19 to evaluate compliance with safety standards. If drivers are
20 unable to properly communicate, you know, with the officers,
21 there's potential for safety risks to the officers and the
22 ability -- the officer's ability to ascertain compliance and
23 safety regulations may be compromised.

24 Law enforcement is highly trained to deal with these
25 types of circumstances at roadside. In many cases, if the

1 officer has reason to believe that the driver cannot adequately
2 communicate, the inspector will call on other resources to
3 complete the inspection or modify the type of inspection being
4 done, be it a level 1, 2 or 3 type of inspection, and/or place
5 the driver out of service in accordance with their state or
6 federal laws and the out search criteria.

7 MR. KOTOWSKI: Could you describe the procedures in
8 the level 1, 2 and 3 inspection?

9 MR. BRIDGE: You want the full 37 steps or you want
10 the basics?

11 MR. KOTOWSKI: A brief synopsis.

12 MR. BRIDGE: A level 1 inspection is basically the
13 full inspection of the driver, the driver's credentials and the
14 vehicle itself. It's where we actually get out, get underneath
15 the vehicle and check the full components of the vehicle along
16 with the driver. A level 2 is what we would refer to as a walk
17 around inspection. The level 2 would consist again of the
18 driver and the driver's credentials and the vehicle's
19 credentials and then just a basic walk around. We wouldn't be
20 underneath the vehicle. And then a level 3 is what we call a
21 driver credential check only, reviewing the driver's license,
22 medical cards, registration to the vehicle and periodic annual
23 inspections of those types, credentials.

24 MR. KOTOWSKI: How does the non-English speaking
25 driver present a hazard to first responders particularly in the

1 cases of automobile or vehicle accidents?

2 MR. BRIDGE: The Commercial Vehicle Safety Alliance,
3 we don't represent responders or the first responder community,
4 although many of our officers are involved in these activities.
5 As part of their extensive training, law enforcement officers
6 are instructed how to respond to various operational
7 circumstances regarding the scene of an accident or incident,
8 depending on what's going to get thrown at you, you adapt and
9 deal with what you have to do.

10 MR. KOTOWSKI: And does the State of Connecticut
11 enforce the non-English speaking driver out-of-service
12 provision?

13 MR. BRIDGE: The State of Connecticut enforces the
14 Federal Motor Carrier Safety Regulations, as they're amended,
15 and we utilize the North American Standardized Service
16 Criteria.

17 MR. KOTOWSKI: And are you aware of officers or
18 jurisdictions that do not inspect commercial motor vehicles
19 because of officer safety issues concerning non-English
20 speaking drivers?

21 MR. BRIDGE: When encountering drivers that have
22 difficulty communicating, inspectors go to great lengths in
23 order to help drivers communicate with those officers. Law
24 enforcement is highly trained to deal with these types of
25 circumstances at the roadside. In many cases, if the officer

1 has a reason to believe the driver cannot adequately
2 communicate, the inspector will call on other resources to
3 complete it, other individuals to come over to assist with it.
4 Some jurisdictions even have translation services that they may
5 utilize for this purpose in order to get the inspection done to
6 insure that all the other areas of safety are not compromised.

7 MR. VAN ETTEN: Sergeant Bridge, if you know, we've
8 heard from Texas and what they do, and we've heard from
9 Connecticut and what they do, in the enforcement or non-
10 enforcement of the English language provision of the Federal
11 Motor Carrier Safety Regulations. Could you explain what other
12 states might be doing and some of their procedures, how they
13 handle this particular provision?

14 MR. BRIDGE: Other states -- I mean that ranges, and
15 it's not just states we're talking about. We're talking about
16 the federales in Mexico as well as all the jurisdictions in
17 Canada here, each adapts to their law as it's prescribed in
18 their jurisdiction. Where the State of Connecticut adopts the
19 federal laws, as amended in intrastate commerce as well. We've
20 already heard that Texas does not, and I'm sure that that
21 varies from state to state as well as in other jurisdictions.
22 I can speak for some of the surrounding states, they operate
23 basically in the same manner that Connecticut does.

24 MR. VAN ETTEN: And that would be to place a driver
25 out of service?

1 MR. BRIDGE: Correct.

2 MR. VAN ETEN: Are you aware, if you're aware, of
3 other jurisdictions that may issue a citation but not put the
4 driver out of service?

5 MR. BRIDGE: I'm not aware of any of those.

6 MR. VAN ETEN: Okay. Thank you.

7 MR. KOTOWSKI: To the FMCSA. Why has the FMCSA
8 initiated a policy not to enforce the North American Out of
9 Service Criteria as it relates to non-English speaking drivers?

10 MR. MILLER: The FMCSA is committed to working with
11 the states, CVSA, the Canadian and Mexican officials, in
12 establishing appropriate out-of-service criteria, guidelines.
13 In this particular instance, the agency did not believe that,
14 that that out-of-service -- that that particular violation
15 ought to be an out-of-service defect, as indicated in Captain
16 Palmer's response, that the ICC when it originally promulgated,
17 indicated that this particular violation was best suited for
18 compliance monitoring during the compliance review process with
19 the motor carrier as a whole.

20 It's important to note that the out-of-service
21 criteria does provide guidance in that if an officer or an
22 inspector at anytime believes that safety is compromised, may
23 take action to place a driver or vehicle out of service.

24 MR. KOTOWSKI: And how does the FMCSA look at the
25 non-English speaking drivers as far as under 391.11, to the

1 motor carrier that he is operating with qualified operators.
2 How does the FMCSA address the non-English speaking driver in a
3 compliance review?

4 MR. MILLER: As the -- as you indicated, the policy
5 was not to place the driver out of service. However, we do
6 want our inspectors, both federal and state inspectors, to note
7 the violation on the roadside inspection report. During then
8 the carrier profile process in preparation for the compliance
9 review, the investigator would look for indications of that
10 particular violation and therefore take action to address that
11 with the motor carrier management.

12 MR. KOTOWSKI: And how is that specifically addressed
13 with the motor carrier, the non-English speaking driver issue?

14 MR. MILLER: It would be cited on the compliance
15 review as necessary and discussed with the motor carrier with
16 regards to proper qualifications of the driver.

17 MR. KOTOWSKI: Would that include an interview with
18 that particular driver?

19 MR. MILLER: It could.

20 MR. KOTOWSKI: On August 26, 1997, the Federal
21 Highway Administration issued an advance notice of proposed
22 rulemaking, requests for comments concerning enforcement of the
23 non-English speaking driver provision, and on January 24, 2003,
24 the FMCSA withdrew the ANPRM. At the time, the NTSB was
25 investigating a crash involving a non-English speaking driver

1 in Slippery Rock, Pennsylvania. According to the Federal
2 Register, the ANPRM received 58 comments. Why was the ANPRM
3 withdrawn?

4 MR. MILLER: The agency withdrew the rulemaking
5 essentially, the agency was balancing the concern for safety
6 with the Americans for Civil Liberty Union's concerns with
7 regard to discrimination practices possibly that could come out
8 of this particular rulemaking process.

9 In addition to that, the agency reviewed all the
10 comments and came to the conclusion that while we are concerned
11 about the safety, the safety impact of English speaking, that
12 there was no data, specific data supporting the overarching
13 national safety problem.

14 MR. KOTOWSKI: And in the withdraw notice, why was it
15 particularly withdrawn in 2003, after being issued in 1997?

16 MR. MILLER: As far as the timing of that withdrawal,
17 I cannot speak to that.

18 MR. KOTOWSKI: The State of Utah alone submitted
19 comments to that ANPRM that included a 150 page document that
20 support 28 specific incidents in which the English language
21 became a safety issue. In the withdrawal notice, the FMCSA did
22 not specifically address those comments by Utah to any depth.
23 Do you know why?

24 MR. MILLER: We addressed the comments from all the
25 parties with regards to the safety concerns, in general terms,

1 with regard to their overall concern. Again, in the instance
2 of Utah, specific submission, they actually supported the idea
3 of not making a change in the, in the English speaking
4 proficiency requirements. They wanted it to remain in the
5 regulations. Their specific comments spoke to not removing it
6 from the regulations. The -- I forget the exact number. You
7 indicated 28 instances in which they indicated. I'm not sure
8 exactly the time frame in which those 58 instances were, but we
9 have to understand that they conduct tens of thousands of
10 inspections per year. Therefore, 28 instances within that
11 volume of contact may not be indicative of a substantial
12 problem.

13 MR. KOTOWSKI: And in the notice of withdrawal, it
14 made reference that this was intended to be a motor carrier's
15 responsibility to evaluate the driver's proficiency, and again
16 as we stated earlier, under Part 391, establishes the rules for
17 minimum driver qualifications, and driver qualifications
18 obviously are an important part of safe operation, and why is
19 it that again that the non-English speaking language is not
20 identified as an acute or critical violation in the compliance
21 review process?

22 MR. MILLER: The regulations in Part 391,
23 specifically 391.11(b) speaks to the minimum driver
24 qualification standards. Yes, while those standards are
25 important, and as I said, every regulation is important, it's

1 important to note that there are a significant number of actual
2 violations with regards to driver qualifications in the
3 critical and acute standards in Part 385 to include drug
4 testing results, drivers without proper licensing, other
5 aspects, physically unqualified drivers and the like.

6 As I indicated, we are understand study right now
7 with the Volpe Center to develop a risk model, if you will,
8 with regards to all the regulations in the FMCSR, and to make
9 that determination as to whether or not they should be critical
10 or acute, and through that process, we may lead to additional
11 391.11(b) violations that would meet that criteria.

12 MR. KOTOWSKI: Okay. To Jonathan Berszas. Could you
13 describe the services that your company provides?

14 MR. BERSZAS: We do motorcoach charters and minibus
15 charters nationwide. We also have a tours division and a
16 travel services division.

17 MR. KOTOWSKI: And what is the difference between a
18 tour and a charter?

19 MR. BERSZAS: A tour is when a client calls and asks
20 us to, in the Southwest, put an itinerary together so that we
21 can accommodate them via the transportation, the hotel rooms
22 and some meals and also escorting or putting a tour guide on
23 board the motorcoach as well.

24 MR. KOTOWSKI: And are you required to register with
25 the Federal Motor Carrier Safety Administration?

1 MR. BERSZAS: To my knowledge, no. Only companies
2 that own or lease and operate those vehicles are required to do
3 so.

4 MR. KOTOWSKI: And do you own or operate
5 motorcoaches?

6 MR. BERSZAS: No, sir.

7 MR. KOTOWSKI: And are you required to comply with
8 the Federal Motor Carrier Safety Regulations?

9 MR. BERSZAS: To my knowledge, no. Only those
10 companies that own and operate vehicles.

11 MR. KOTOWSKI: Do you have a vendors list of
12 motorcoach carriers that you utilize on a regular basis?

13 MR. BERSZAS: Yes, we do.

14 MR. KOTOWSKI: And what are your requirements to
15 accept a motor carrier onto your vendor list?

16 MR. BERSZAS: We have a myriad of questions that we
17 verbally ask over the phone whenever we have a new vendor that
18 we're looking at, and then we fax this -- these questions to
19 them and ask them to answer them and respond back to us as
20 well.

21 MR. KOTOWSKI: And do you require your motor carriers
22 to be rated by the Federal Motor Carrier Safety Administration?

23 MR. BERSZAS: Yes, we do. We use saferys.org and
24 satisfactory is what we look for.

25 MR. KOTOWSKI: And do you conduct on site visits of

1 your vendors?

2 MR. BERSZAS: We do to many of them. However,
3 because we are nationwide, we can't. However, we do ask many
4 of the questions in regards to their vehicles and ask for
5 pictures inside and outside as well.

6 MR. KOTOWSKI: And have you ever contracted with the
7 Bus Bank to provide services?

8 MR. BERSZAS: We have not contracted with the Bus
9 Bank, no, sir.

10 MR. VAN ETEN: I just have one question because I
11 don't know. Mr. Berszas and Mr. Maulsby, do you have -- it
12 sounds like you do the same thing. Am I hearing that correct
13 or what's the difference in the two companies?

14 MR. MAULSBY: We do similar things. The Bus Bank is
15 not specifically in the tour business if you will. We arrange
16 charter bus services primarily for private groups,
17 corporations, private groups, schools and so on. We also do
18 not own buses. We work with an independent network of
19 operators.

20 MR. BERSZAS: And we do tour services in the
21 southwest as well as we receptive services for international
22 people coming to the southwest, and travel services that
23 incorporate group air and group hotels.

24 MR. VAN ETEN: Thank you.

25 MR. KOTOWSKI: Do you conduct -- do you monitor the

1 safety performance of the motor carriers that you use
2 periodically?

3 MR. BERSZAS: We do. And we also look again on
4 safersys.org to do that, and we also call the companies and ask
5 their ratings as well and when was the last time they were
6 inspected.

7 MR. KOTOWSKI: And do you do that every time you
8 contact a carrier?

9 MR. BERSZAS: No, sir. Usually in a six month
10 period, we try to do so every six months.

11 MR. KOTOWSKI: Okay. And do you require a motor
12 carrier that you use to notify you if they've been involved in
13 an accident?

14 MR. BERSZAS: No, we do not.

15 MR. KOTOWSKI: To the FMCSA. What are the
16 requirements for bus brokers?

17 MR. MILLER: Actually the Federal Motor Carrier
18 Safety Administration has no authority over bus brokers or
19 brokers in general of passenger transportation. In fact, they
20 are statutorily prohibited from actually registering such
21 entities.

22 MR. KOTOWSKI: Do you have any information about the
23 number of bus brokers that are operating?

24 MR. MILLER: Due to the statutory limitations of our
25 authority over bus brokers, and the inability to register such

1 entities, you know, we have no ability to then get a census, if
2 you will, of that community.

3 MR. KOTOWSKI: Are you aware of any federal agency
4 that has oversight authority of bus brokers?

5 MR. MILLER: Not to my knowledge.

6 MR. KOTOWSKI: Are you aware of any of the states
7 that have an oversight role of bus brokers?

8 MR. MILLER: Not to my knowledge.

9 MR. KOTOWSKI: And again to the FMCSA, do emergency
10 waivers, exemptions relax the hours of service standards?

11 MR. MILLER: Yes, they do.

12 MR. KOTOWSKI: And could you describe how?

13 MR. MILLER: Essentially once a declaration of
14 emergency is declared by either the President, the governor or
15 field administrator within that regional area, the exemptions
16 found in 49 C.F.R. 390.23 are immediately invoked, which exempt
17 the safety regulations from Part 390 to 399, for those
18 individuals who are providing direct support to the emergency
19 area.

20 MR. KOTOWSKI: And what were the effects, if you
21 know, of the exemption of the Federal Motor Carrier Safety
22 Regulations in the Wilmer evacuation process?

23 MR. MILLER: We're not aware that there was any
24 direct effect of the exemption from the regulations,
25 specifically in this event.

1 MR. KOTOWSKI: And were these exemptions in effect at
2 the time of the bus fire?

3 MR. MILLER: Yes, they were.

4 MR. KOTOWSKI: And when were they placed into effect
5 and by who?

6 MR. HAVELAAR: Well, Governor Perry, Texas Governor
7 Perry issued a declaration of emergency on September 20, 2006
8 (sic) and that automatically involved the exemptions within the
9 Federal Motor Carrier Safety Regulations.

10 MR. KOTOWSKI: And was the driver in violation of his
11 duty hours at the time of the fire?

12 MR. HAVELAAR: No, he was operating under the
13 exemption.

14 MR. KOTOWSKI: And had he not been exempted, would he
15 have been in violation of the Federal Motor Carrier Safety
16 Regulations?

17 MR. HAVELAAR: Yes, if the exemption had not been in
18 place, he would have been in violation.

19 MR. KOTOWSKI: Was the driver, other than the
20 exemption, if the exemption had not been in place, was he in
21 violation of any other of the Federal Motor Carrier Safety
22 Regulations?

23 MR. HAVELAAR: Not the driver per se. No, the driver
24 was operating, you know, without having the pre-employment drug
25 testing back. So the carrier would have been in violation but

1 not the driver per se.

2 MR. KOTOWSKI: And the utilization of a driver who
3 did not have a pre-employment drug test, was that also waived
4 in that exemption?

5 MR. HAVELAAR: No, the exemption does not include
6 drug testing.

7 MR. KOTOWSKI: Okay. Madam Chairman, that concludes
8 the panel's presentation.

9 CHAIRWOMAN HIGGINS: Thank you. We will not turn to
10 questions from the parties, and we'll start with MCI.

11 MR. MURPHY: Thank you. No questions.

12 CHAIRWOMAN HIGGINS: United Motor Coach?

13 MR. PRESLEY: Thank you, Chairman Higgins. A
14 question directed to Mr. Maulsby. Mr. Maulsby, as I
15 understand, you're operation, there's a good chance you're the
16 largest consumer of motorcoach services in the country. What
17 do you see as someone whose safety is the number one priority,
18 what do you see as your largest impediment to achieving that
19 safety or selecting carriers that are safe?

20 MR. MAULSBY: Thank you for that question. Clearly,
21 you know, clear and consistent guidelines and the execution of
22 those guidelines and policies are first and foremost is what we
23 need. Secondly, we need good information and we need solid
24 dissemination of that information. So there's a clear
25 understanding of what's expected and how, you know, operators

1 are evaluated and measured. And then the reporting of that
2 information and then finally, the dissemination, the
3 dissemination not only to us, but, you know, our ability to
4 disseminate that to our customers and create the processes and
5 the technology development and all those things you need to do
6 to make this work. Because it is a very disparate industry,
7 and there's a lot of information out there that needs to be
8 focused and that's what we do every day.

9 But clearly starting -- the starting point has to be
10 better information and better communication of that
11 information.

12 MR. PRESLEY: Mr. Havelaar, on the day that Bus Bank
13 engaged Global, on behalf of Sunrise, they had a satisfactory
14 rating. Shortly thereafter -- shortly after the fire, there
15 was a compliance review that revealed that the carrier was
16 anything but satisfactory. What has the FMCSA done since that
17 fire to make that not ever happen again?

18 MR. HAVELAAR: Well, of course, we regret the
19 horrific consequences of the event as everybody does. We
20 continue to have a high focus on passenger carriers. They
21 continue to be our highest priority. And we -- but ultimately
22 we put the responsibility of compliance with the regulations on
23 the motor carriers.

24 MR. PRESLEY: Captain Palmer, approximately how many
25 motor carriers in the State of Texas do you regulate?

1 CAPTAIN PALMER: I'm not sure what that number is.
2 It's somewhere I'm going to say -- well, that we know of, I'm
3 going to say between 25 and 30,000 probably.

4 MR. PRESLEY: Do you have any idea what percentage of
5 those carriers are motorcoach operators?

6 CAPTAIN PALMER: No, I don't.

7 MR. PRESLEY: Do you feel that you have adequate
8 resources to regulate passenger carriers?

9 CAPTAIN PALMER: It's kind of hard to answer. I
10 would, I would say we do.

11 MR. PRESLEY: What is the criteria for selecting a
12 motorcoach in Texas for a roadside inspection?

13 CAPTAIN PALMER: It just so happens I have our
14 policy. Basically -- I don't know if anybody wants to hear
15 this whole thing, but --

16 MR. PRESLEY: A synopsis.

17 CAPTAIN PALMER: -- roughly -- basically level 1
18 inspections will be performed on buses under the direction of a
19 certified bus inspector so that they -- obviously so they know
20 what they're doing. Basically we have en route inspections,
21 which are generally going to be level 2s and 3s because,
22 because you need bus ramps, you need some special things to be
23 able to do level 1s, but it is possible to do level 1s. We do
24 facility inspections where we'll go to a motor carrier, the bus
25 company's site and do inspections, and then we'll also do

1 destination inspections which, for example, like if, you know,
2 we'd set something up and if there was some kind of a big event
3 where we knew a bunch of motorcoaches were going to be going
4 to, we would check those motorcoaches after the passengers had
5 been let off the bus.

6 MR. PRESLEY: Is that generally known to the
7 motorcoach community?

8 CAPTAIN PALMER: It should be because I believe the
9 motorcoach community was heavily involved in our policy.

10 MR. PRESLEY: Okay. Thank you.

11 CHAIRWOMAN HIGGINS: American Bus Association?

12 MR. LITTLER: Thank you. Just I guess one follow up
13 question to a question that was asked to the last panel from I
14 believe Ms. McMurtry. There was a question raised earlier, and
15 this I guess I'll give to the Federal Motor Carrier Safety
16 Administration. The question raised earlier on the Department
17 of Defense's inspection protocol and that it's a very
18 comprehensive inspection or audit of a carrier not only of
19 their general compliance but they also look at the vehicles as
20 well. A portion of the vehicles undergo what would be the
21 equivalent to a -- the inspection you'd get on a level 1
22 inspection.

23 Now the past FMCSA Administrator indicated that the
24 agency would be working towards including an accepting the DOD
25 ratings in the agency's safety process, and I guess we're

1 wondering, is this proceeding? Is this still being worked on,
2 and where are we on that?

3 MR. MILLER: I don't have a specific answer as to
4 where we are specifically on that particular issue. We have
5 been evaluating and have historically evaluated CSS' activity
6 in providing that service to MTMC. That particular process
7 that they use in reviewing the motorcoach operations, the
8 timeframes in which they review the compliance are different
9 than our timeframe. We look at a one year period of time,
10 where they may go back further in time in their evaluation of
11 their safety management.

12 In addition to that, the type -- they look at some
13 additional things beyond which we look at with regards to
14 establishing their ratings. Having said that, certainly we
15 want to pursue the, you know, cooperative effort in receiving
16 any and all information about passenger carriers in general,
17 all motor carriers in general for that matter, and find the
18 best way of utilizing that data in our safety management
19 oversight processes.

20 MR. LITTLER: Thank you. No further questions.

21 CHAIRWOMAN HIGGINS: Sunrise.

22 MR. SCHLOTT: Thank you. Mr. Maulsby, I have some
23 questions please. Your website says you have a very big bus
24 operator certification process that reviews operators
25 insurance, its safety programs, its driver certification and

1 customer feedback. Mr. Maulsby, would you agree that Sunrise
2 could reasonably expect Bus Bank to provide it with safe buses?

3 MR. MAULSBY: We believe every time we do a charter,
4 that the bus operator is safe. Our standards are very
5 specific. We start with the insurance. We look at the safety
6 rating. Clearly when someone has had a compliance review as
7 we've heard here this morning, with a satisfactory rating, we
8 would expect it to be a safe operation. We evaluate every
9 customer every time we do a trip. We send out a survey to a
10 customer. We understand what that customer has to say about
11 our operation and about the experience they have. We do
12 thousands of charters and fewer than 3 percent ever come back
13 with a complaint, and most of those complaints are about being
14 on time. I can tell you that we did four charters with Global
15 Limo before we booked -- four charters plus the FEMA evacuation
16 efforts before we booked the Sunrise trip. We never had a
17 complaint from a customer and, in fact, there was a -- there
18 was compliments to Global Limo. We had no indication
19 whatsoever there was a problem here. Had we had any indication
20 whatsoever, we clearly would not have put those people on that
21 bus. The fact of the matter, if you look at the situation
22 surrounding Houston leading up to Hurricane Rita, you know,
23 there simply were not buses in Houston. If you consider that,
24 you know, you had Katrina literally three weeks before, where
25 there were thousands of buses called, and we participated in

1 that, 25 percent of the buses that we brought in for Katrina
2 ourselves, of the 275 or so, only 25 percent came from
3 bordering states. We had to go as far west as California. We
4 had to go to Minnesota and Wisconsin to bring in buses. Along
5 comes Rita, you have buses sitting in New Orleans, you have the
6 State of Texas asking for more buses, you have the demand that
7 is consistent with the peak fall, you know, charter bus, you
8 know, demand period, and you look at this situation. We were
9 doing our very best. We were trying to do the right thing, you
10 know, to help, and unfortunately it didn't work out the way we
11 wanted it to. But there was never any indication that this bus
12 was unsafe or that we were putting anyone in harms way.

13 MR. SCHLOTT: Mr. Maulsby, did the Bus Bank, did the
14 Bus Bank ever inspect the bus in question? If so, when?

15 MR. MAULSBY: No. We do not inspect buses.

16 MR. SCHLOTT: Was the Bus Bank aware that the driver
17 didn't speak English?

18 MR. MAULSBY: It's not my understanding that we had
19 any understanding that this driver did not speak English, no.

20 MR. SCHLOTT: One fine question, sir. Did Global
21 Limo provide Bus Bank with any information about its safety
22 program?

23 MR. MAULSBY: I'm not aware of that. I don't know
24 specifically. Our records show the consistent pattern of how
25 we work with an operator, check their insurance, check out

1 their safety rating, and within that safety, you know, rating
2 there's an implicit understanding of what they need to do.

3 MR. SCHLOTT: No further questions. Thank you.

4 CHAIRWOMAN HIGGINS: Thank you. ArvinMeritor.

5 MR. JOHNSTON: Thank you, but no questions.

6 CHAIRWOMAN HIGGINS: Bridgestone?

7 MR. QUEISER: Thank you. No questions.

8 CHAIRWOMAN HIGGINS: National Highway Traffic Safety
9 Administration.

10 MR. SAUL: Thank you. No questions.

11 CHAIRWOMAN HIGGINS: FMCSA.

12 MS. McMURRAY: Yes. Thank you. I'd like to ask some
13 clarifying questions about the Bus Bank's operation,
14 Mr. Maulsby. You stated in your remarks earlier that you
15 require carriers in your Bus Bank to abide by the Bus Bank's
16 service requirements by sending a carrier certification
17 package, that they're required to submit before you enter into
18 an operational agreement. Can you describe the specific
19 service requirements that this certification mandates and is
20 this something that's strictly a self-certification by the
21 carrier, or do you require some validating evidence that these
22 service requirements are being met?

23 MR. MAULSBY: The certification process that we
24 provide, the certification packet, is information setting up
25 what our expectations are, what's required and it's pretty much

1 a checklist. It was developed back in 2002. We -- which was
2 the first full year of business that we were -- it was our
3 first full year of business. We sent it out to an operator.
4 We set up our expectations. The expectations of safety and
5 again we validate that up front. We validate their insurance,
6 and we expect that an insurance operator who underwrites, you
7 know, a charter bus operator has done their due diligence and
8 we know they need \$5 million worth of insurance, and we
9 validate that. We have them prove that to us.

10 Secondly, if they've had a compliance review, that
11 compliance review must be satisfactory, you know, and when
12 someone has a review, we see a satisfactory, that's a good
13 thing because we know that someone's looked at this and done
14 their job. That's our expectation.

15 MS. McMURRAY: So the service, the service
16 requirements that you alluded to earlier is really indirectly
17 based on the ability of the carrier to hold \$5 million worth of
18 insurance and no, no other evidence of maintaining service,
19 expectations on these vehicles. Is that right?

20 MR. MAULSBY: Well, as I indicated, we interact with
21 bus operators every day, and we do thousands of charters. So
22 we have somewhat of an understanding of how bus operators work
23 clearly. We have records on every operator that we work with.
24 When they do an operation for us, we determine, did they do a
25 good job or did they not? That starts to build a very specific

1 and proprietary data base and knowledge base most important, of
2 how operators work and when operators don't effectively perform
3 their services, that sends signals to us. And we take action,
4 and we clearly take action anytime that we discover that an
5 operator, you know, has fallen out of the satisfactory rating,
6 if they've had a compliance review and then another one happens
7 and they fall below satisfactory. So we're, we're doing our
8 due diligence not just up front. We do the base due diligence,
9 but we continue to do due diligence as an operator.

10 And the other reality is that there were some
11 operators that we do a lot of work with and interact with them
12 very frequently, and there are some operators that we do a
13 little work with and don't interact with them frequently, but
14 we clearly have a record of operators we work with and how they
15 perform in our behalf and on behalf of our customers.

16 MS. McMURRAY: And one final question, staying on
17 this Bus Bank certification requirements, when you first
18 entered into this relationship with Global Limo, did you
19 receive this certification from them?

20 MR. MAULSBY: We did not -- I don't recall receiving,
21 again, I wasn't on the due diligence at that time obviously.
22 But as I look at our records and talk to our people, I recall,
23 you know, we would have sent it out. We didn't get it back
24 specifically, you know, but that's not unusual, you know.
25 Operators tell us, you know, what their information is, and

1 what we, what we really want back from an operator is really
2 the number of buses they have, you know, the types of vehicles
3 they have, what type of business they do, you know, what they
4 do with -- what are the number of drivers they have and so on,
5 to really get a profile of their business. The certification
6 package from us is going out to them and confirming here's what
7 our expectations are, and we get back on, back on the phone
8 with the operators and talk with them about it. And then we
9 do, you know, a trip and we continue to build a history with
10 them and continue to talk with them if we have an issue.

11 MS. McMURRAY: Okay. Thank you. That concludes my
12 questions.

13 CHAIRWOMAN HIGGINS: Thank you. We'll turn to the
14 Board of Inquiry. Ms. Weinstein?

15 MS. WEINSTEIN: Thank you. I just have three short
16 questions for either of the FMCSA representatives. You
17 indicated earlier that Global was not scheduled for a revisit
18 at its 2004 compliance review. What would prompt a revisit?

19 MR. HAVELAAR: A revisit of Global?

20 MS. WEINSTEIN: For any operator.

21 MR. HAVELAAR: For any. Normally they're given a
22 Safestat score that would put them in the A and B category
23 which means that two of the safety evaluation areas would reach
24 the threshold. For Global specifically, they had one area that
25 reached the threshold. We also get complaints on motor

1 carriers, and sometimes there are investigations directed from
2 Congress or from other sources.

3 MS. WEINSTEIN: Thank you. And, Mr. Miller, I just
4 want to clarify, I think that I heard you say that there are
5 statutory limits on FMCSA's authority over bus brokers. If
6 that is in writing -- Is that correct?

7 MR. MILLER: Yes, it is, ma'am.

8 MS. WEINSTEIN: Is that in writing somewhere that you
9 could submit to the hearing docket?

10 MR. MILLER: Actually, yes. It's found in 49 U.S.C.
11 13506, paragraph (a)(14), and we'll submit that for the record,
12 ma'am.

13 MS. WEINSTEIN: Thank you. And my last question is
14 for Mr. Bridge. CVSA has expressed concerns about limiting the
15 vehicle out-of-service rate to interstate only in the
16 compliance review process. Can you discuss CVSA's concerns and
17 how inclusion of the intrastate violations would affect the
18 compliance review results?

19 MR. BRIDGE: In the discussions at our meetings,
20 which if everyone doesn't know, our meetings consist of our
21 federal partners, state partners, the jurisdictions and
22 provinces from Canada as well as the folks from industry. Many
23 of the discussions have come across about interstate versus
24 intrastate and including that, and I believe that SAFETEA-LU
25 has included some of that information to be discussed as part

1 of some of the future packages. Discussions that happened and
2 come across some of the meetings go to the effect that does the
3 state line really differentiate the safety fitness of a
4 company? And much of the discussion goes to the fact that the
5 state line does not make any difference whether I'm solely in a
6 state or across the line. So with SAFETEA-LU in place now and
7 moving forward, we hope that we can see that incorporated so we
8 can get all that information into the Federal Motor Carrier
9 information systems.

MS. WEINSTEIN: Thank you. And
10 would that apply to the driver out-of-service rate also?

MR. BRIDGE: To the extent that it applies into the
11 Motor Carrier Safety management systems, yes.

MS. WEINSTEIN: Thank you. I have no further
12 questions.

CHAIRWOMAN HIGGINS: Dr. Ellingstad?

DR. ELLINGSTAD: Just a couple of clarifications.
16 Mr. Maulsby, perhaps you've told us and I did not write it
17 down, but roughly how many operators do you deal with or do you
18 have involved?

MR. MAULSBY: Over the last 24 months, we dealt with
20 approximately 1200 operators. We have operators that we use
21 consistently, a smaller number, but we deal throughout North
22 America.

DR. ELLINGSTAD: Okay. And you had indicated as part
24 of your certification that there was a requirement for
25

1 satisfactory compliance review if a review had been conducted.
2 Roughly what, what percentage of the operators has it been your
3 experience that had had a compliance review?

4 MR. MAULSBY: I don't know the specific number, but
5 it's somewhere less than 10 percent of the operators.

6 DR. ELLINGSTAD: Are you dependent upon essentially
7 the self-report of the operators to get the information?

8 MR. MAULSBY: In terms of a specific safety review?

9 DR. ELLINGSTAD: Yeah. Do you have access to FMCSA
10 records?

11 MR. MAULSBY: We have access to the Safestat, you
12 know, the Safestat System, and we depend on the Safestat
13 System, you know, and we depend on the Federal Government to
14 provide that information, and when they do their compliance
15 reviews, we look at those and take those very seriously.

16 DR. ELLINGSTAD: No, the gist of my question was do
17 you have adequate information coming out of FMCSA to, you know,
18 to make that part of your certification decision?

19 MR. MAULSBY: We would like to believe if there were
20 a greater number of, you know, 100 percent inspections, that
21 that information would be very valid and good. But obviously
22 given where we are today, we've had to look at how we can
23 augment that information, and we've done that, and I'll give
24 you one example. You know, we now pay for a service that the
25 same large insurance companies get every week, that we get an

1 exception report every week that provides us information on
2 operators that their Safestat rating has changed or their
3 operating status has changed, and so that's one thing we do.
4 And we're doing our very best as we continue to build our
5 knowledge base. We do thousands of charters. Every time we do
6 a charter, we learn something new. Every day we learn
7 something new. Every day we ideally get better at what we do.

8 But we clearly need to depend on the Federal
9 Government to help us do our job better and to provide better
10 information.

11 DR. ELLINGSTAD: Thank you.

12 MR. MAULSBY: Thank you.

13 CHAIRWOMAN HIGGINS: Mr. Magladry.

14 MR. MAGLADRY: I'll continue along some of the same
15 lines of questions, Mr. Maulsby. You had talked about your
16 interest in getting a safety rating on a company before you
17 enter into a contractual arrangement. If -- and yet you only
18 have about 10 percent of those that you dealt with that have
19 safety ratings. What do you do when they don't have a safety
20 rating?

21 MR. MAULSBY: We look at the operator. We do our due
22 diligence a little deeper by knowing who that operator is, by
23 knowing what their affiliation may be, whether it's an
24 affiliation such as the United Motorcoach Association or the
25 ABA or it's an affiliation, you know, of a different bus

1 operator group. We do our best to get out and see them, to
2 understand them. Again, we can't do a safety rating per se,
3 but we can see their operation and better understand who they
4 are and the kind of business people they are.

5 But realistically, you know, we have to look at their
6 track record and make a judgment as to who these operators are
7 and, you know, how they do business and, and do our very best
8 in that respect, and then as we continue to do business with
9 them, as we continue to be part of the industry, and we are
10 part of the industry, we spend time with operators. We make
11 hundreds of, you know, visits to operators every year to step
12 on buses, you know, to understand what their operation looks
13 like, to walk through it, to see who they are, to understand
14 how they do business and what they're doing. But clearly we're
15 not safety experts. So we don't crawl under buses, and we
16 don't, you know, fully inspect them from a mechanical
17 standpoint.

18 MR. MAGLADRY: Well, for those 10 percent, let's say,
19 of your -- of the companies that you do work with, and you do
20 have a safety rating --

21 MR. MAULSBY: Right.

22 MR. MAGLADRY: -- that safety rating is a function of
23 the day the safety rating, the compliance review took place.
24 And so sometimes there's a great deal of time that goes by, by
25 the time that you might look at what that safety rating is. So

1 the process that you just described to me, that's a process
2 that you use for those 10 percent as well as the other 90
3 percent?

4 MR. MAULSBY: Well, even for the 10 percent who may
5 have a rating, you know, we're still out there working with
6 them day in and day out doing our very best to visit them. But
7 that being said, when you see a compliance review that's --
8 that the Federal Motor Carrier Safety Administration has
9 conducted, we look at that and say they've done their job and
10 we can expect that safety rating and that inspection, they
11 would have done, to be appropriate. We're not safety experts
12 and we don't have -- we or any consumer across the country has
13 no other choice but to depend on that information and depend
14 on, you know, the work that they do.

15 MR. MAGLADRY: So if you look at a carrier who's had
16 a compliance rating say five years ago, how do you know that
17 that compliance rating is still valid?

18 MR. MAULSBY: We have to take it on face value that
19 when you get a compliance review, if someone has a reason to go
20 back, someone in the Federal Government or the state government
21 has made a judgment to go back and reevaluate this operation,
22 they will have done so. If not, then, you know, we have to
23 look at that and take it on face value.

24 MR. MAGLADRY: So you would expect that that five
25 year old compliance review would still be valid?

1 MR. MAULSBY: Our expectation is, as we've heard here
2 this morning, and how we know the industry. Our expectation is
3 that if they have a reason to go back and determine that they
4 need to do another compliance review, they'll do so.

5 MR. MAGLADRY: Thank you. Captain Palmer, if I can
6 follow up on one of UMA's questions a little bit earlier. I
7 think you indicated that there's 25 or 30,000 carriers in the
8 State of Texas. If, if I can ask the same question in a
9 different way, how much staff is available in DPS to examine
10 these 25 or 30,000 carriers?

11 CAPTAIN PALMER: Basically there are -- we have
12 approximately about 40, 40 people that are assigned
13 specifically to do compliance reviews. Some of those are
14 troopers. Some are non-commissioned investigators. And then
15 we also have 23 people in the New Entrant Program that are dual
16 certified to do New Entrant Safety Audits and compliance
17 reviews. So you can figure they're going to do a minimum of
18 six a year to maintenance their certification. So roughly 60,
19 63 people or so.

20 MR. MAGLADRY: And can you tell me how many
21 compliance reviews that constitutes on an annual basis?

22 CAPTAIN PALMER: Well, I can tell you last year we
23 were just a little under 1,000 for the year I believe.

24 MR. MAGLADRY: Okay. Mr. Miller, can you take a few
25 moments and explain what Safestat is all about and how that is

1 used?

2 MR. MILLER: Safestat is our monitoring system where
3 we're monitoring the motor carrier's performance over time. It
4 looks at a 30 month window of data. Essentially Safestat is
5 broken down into seven or eight categories depending on how far
6 you want to go with the description. Categories A, B, C, D,
7 through the letters H, essentially Categories A and B are those
8 carriers that are marked deficient in two of the four safety
9 evaluation areas, two or more of the four safety evaluation
10 areas. And they are specifically targeted for compliance
11 reviews. In other words, those are the carriers that have been
12 identified as posing the, the highest risk of crash
13 involvement, thus our agency targets them for compliance
14 reviews.

15 When you go beyond the Category A and B carriers, you
16 get into the Category D, E, F and G. Those are specific
17 individual safety evaluations areas in which a motor carrier is
18 deficient in, D being the crash involvement area, E being the
19 driver safety evaluation area, F being the vehicle, and then G
20 being the overall safety management approach.

21 MR. MAGLADRY: And can you give me a rough idea how
22 carriers are in the A and B categories?

23 MR. MILLER: I believe the -- I don't have that
24 number right in front of me, but I believe it was somewhere in
25 the area of 5800. I don't have that number available to me,

1 sir.

2 MR. MAGLADRY: And can you give me an idea of how
3 many compliance reviews FMCSA does in an annual -- on an annual
4 basis?

5 MR. MILLER: Through a partnership with our state
6 partners, a combined effort of approximately 10,000 compliance
7 reviews were conducted so far this year.

8 MR. MAGLADRY: If -- since the number of A and B is
9 less than the number of total compliance reviews, am I correct
10 in assuming that you've got all 6500 of the A and Bs?

11 MR. MILLER: I can't answer that specifically whether
12 we got to every A and B. That is certainly our objective. As
13 Mr. Havelaar indicated earlier, we have other statutorily
14 required compliance reviews to conduct with regards to
15 compliance, Congressional inquiries, of course, fatal crash
16 investigations that we would conduct. Some of those compliance
17 reviews on A and B carriers may be repeat visits within a given
18 12 months period.

19 MR. MAGLADRY: Thank you. Mr. Havelaar, you had
20 talked about Global in particular, Global Limo, and that after
21 the FMCSA's first compliance review, they hired a safety
22 consultant. And that sometime after that, the role of the
23 safety consultant was reduced. I presume that's a conclusion
24 you've come to out of the second compliance review.

25 MR. HAVELAAR: Yes. Well, let me clarify just a

1 little bit. They actually hired the safety consultant sometime
2 after the 2002 educational contact by DPS. And they used that
3 consultant pretty much full-time up until we did our review in
4 2004. Then following the 2004 review and our issuance of a
5 satisfactory safety rating, they started decreasing the use of
6 that safety consultant, and likewise, we saw a degradation in
7 the safety compliance that resulted out of the 2005 review.

8 MR. MAGLADRY: Well, the degradation if you will are
9 the reduced use of the safety consultant, is something you
10 don't -- you wouldn't normally know about unless you did
11 another compliance review as you did. Is that correct?

12 MR. HAVELAAR: That's correct. Although we might see
13 indications of it on the roadside inspections, and as we were,
14 I mean the carrier had elevated to a Category E carrier which
15 had one SEA, one safety evaluation area in the Safestat above
16 the threshold. And so they were already -- we were already
17 seeing the indications of the deterioration.

18 MR. MAGLADRY: Thank you. And, Mr. Berszas, do you
19 have a similar certification program if you will to the one
20 that's been described by Mr. Maulsby?

21 MR. BERSZAS: Not specifically a certification
22 program, but when we do look for a new vendor to utilize their
23 services, the three page documents that we send them alludes to
24 their vehicles, the facility -- maintenance facility if they
25 have one on property and that they can maintain that, and then

1 also the Safestat system as well.

2 MR. MAGLADRY: I believe when you were making your
3 comments, do you also make travel arrangements for
4 international customers to include airlines and hotels?

5 MR. BERSZAS: The international clients usually use
6 what's called our receptive services where they might come into
7 Texas and not be familiar with Dallas, Houston, that area, and
8 we'll put a program together, build the itinerary, put meals
9 together, a tour essentially, and a step one guide, English
10 speaking and possibly in their native language as well.

11 MR. MAGLADRY: But you don't arrange any airline
12 flights?

13 MR. BERSZAS: We do domestic. We go group air
14 domestically.

15 MR. MAGLADRY: Do you have any thoughts about --
16 well, the question is, do you have anything to do with choosing
17 the airline?

18 MR. BERSZAS: In regards to?

19 MR. MAGLADRY: How do you choose an airline to
20 accommodate a customer?

21 MR. BERSZAS: We -- preferably most customers want
22 non-stop. So depending on their point of origin, and what
23 airlines do non-stop service to the destination city, we will
24 offer several carriers to our clients, and give them the
25 perspective rates.

1 MR. MAGLADRY: So you're basing this on who goes from
2 City A to B and what it costs?

3 MR. BERSZAS: Correct. Many times that's what the
4 client would like to know from A to point B and then non-stop
5 is preferable.

6 MR. MAGLADRY: But you're in no way certifying that
7 one carrier is better than another carrier?

8 MR. BERSZAS: No, sir.

9 MR. MAGLADRY: Thank you. I have no more questions.

10 CHAIRWOMAN HIGGINS: Member Hersman?

11 MR. HERSMAN: My first questions are going to be
12 directed to the FMCSA officials, and I want to say before I ask
13 you some hard questions, I recognize how difficult your jobs
14 are. So it's easier to point out the problems than it is to
15 fix them.

16 Global Tours and Charters changed their name in 2003
17 to Global Limo. Did that require them to reregister or do they
18 have the ability to list d/b/a on their registration?

19 MR. HAVELAAR: I don't know. We'll have to issue an
20 answer to that in writing to the docket.

21 MS. HERSMAN: Okay. And it said they registered in
22 2005, with 6 motorcoaches and 10 drivers. Was that accurate,
23 in fact, the information that you had on file as to their
24 vehicles and their drivers?

25 MR. HAVELAAR: In which year?

1 MS. HERSMAN: 2005. They had registered it says with
2 6 motorcoaches and 10 drivers?

3 MR. HAVELAAR: That's what's on the compliance
4 review. Well, all I would be able to attest to is what was on
5 our compliance review.

6 MS. HERSMAN: But in a post-accident compliance
7 review, what did you find? How many drivers and vehicles? The
8 thrust of my question is there's a statutory requirement for
9 motor carriers to update their fleets, vehicles, their
10 information very two years. The OIG found that 27 percent of
11 all carriers are not doing that, and that in general FMCSA is
12 not pursuing that. The focus -- the safety focus is you're
13 basing your accident rate on the vehicles that they represent
14 to have, you know, their out-of-service rate, all of that
15 information. If they're not accurate when they register with
16 you, it's hard for you all doing evaluation. My question is
17 what you found in the post-accident compliance review, did it
18 comport with what they had purported to have pre-accident.

19 MR. HAVELAAR: Yes.

20 MS. HERSMAN: Okay. So the driver that was the
21 accident driver was listed as a driver for them?

22 MR. MILLER: When a motor carrier registers with the
23 FMCSA, they do not provide specific driver lists per se. They
24 give specific accounts of power units and drivers. When they
25 submitted their, what's called a MCS150 in 2005, indicating 6

1 power units I believe you indicated and 10 drivers, that was
2 based on the compliance review where we found 6 drivers, 6
3 vehicles. It was relatively accurate. Of course, driver
4 fluctuations in a motor carrier can change on a daily basis,
5 but it was within a normal range if you will.

6 MS. HERSMAN: But did they have this driver listed as
7 one of their drivers when you did the compliance review, not
8 when they registered, but when you did the compliance review?

9 MR. HAVELAAR: In the 2005 compliance review, yes.

10 MS. HERSMAN: Okay. Even though he wasn't legal to
11 operate as a driver?

12 MR. HAVELAAR: Yes. The carrier had this driver
13 listed as one of their drivers. However, the driver was not
14 qualified in accordance with the Federal Motor Carrier Safety
15 Regulations. In the 2005 Compliance review, the carrier was
16 cited for using this driver while not maintaining a complete
17 driver qualification file; using this driver before receiving a
18 negative result from the pre-employment drug test; and for
19 using a non-English speaking driver.

20 MS. HERSMAN: Okay. Were there other drivers that
21 were not listed that were working for the company?

22 MR. HAVELAAR: No, we only discovered the six
23 drivers, and he was the only non-English speaking one.

24 MS. HERSMAN: Okay. Captain Palmer talked about the
25 educational review that they had done in 2002, and how things

1 have changed now that you have a New Entrant Safety Audit. Do
2 you, FMCSA, utilize the state data for compliance reviews now
3 to be able to issue a rating? Let's say the stuff that Texas
4 DPS provided to you from their 2002 educational visit, if they
5 did that now, would you be able to then take that data and turn
6 it into a rating?

7 MR. HAVELAAR: Well, we don't issue ratings off of
8 the New Entrant Audits.

9 MS. HERSMAN: Okay.

10 MR. HAVELAAR: If the state did a compliance review,
11 yes, we would use the data from the compliance review to issue
12 a rating.

13 MS. HERSMAN: Okay. So the work that state
14 enforcement authorities are doing now can be utilized so that
15 FMCSA doesn't have to potentially take that information and
16 then go back at some point in time to do a CR. They can use
17 that to issue?

18 MR. MILLER: That is correct.

19 MS. HERSMAN: Okay. You made a statement earlier
20 that the motor carriers are your highest priority, one of your
21 highest priorities to try to get to review them, but a
22 significant number are still not -- don't have a rating. As
23 Mr. Maulsby just mentioned, he looks at maybe 10 percent that
24 actually are rated. You knew that Texas had found significant
25 issues, that potentially would have put them in that category,

1 and they were a priority because they were an unrated motor
2 carrier, but it took almost two years to get back to them. Is
3 that kind of the workload that you're dealing with, when you
4 know you've got a problem, you potentially can't address it
5 because you've got lots of problems? Is that the turn around
6 time that we should expect?

7 MR. HAVELAAR: Well, there's a balance that we have
8 to put -- we have to apply to our resources and to the
9 necessity to getting to the carrier that we're assigned to and
10 that are priority. Now as I said, the passenger carriers are a
11 higher priority, especially the unrated passenger carriers and
12 our safety plan in Texas always specifically had them listed,
13 but I do have limited staff that I have to apply and prioritize
14 their work. And those, those particular reviews are a priority
15 but I can't necessarily have all my staff out doing them.

16 MS. HERSMAN: So in general, is it fair to say that
17 the time that you might sit in the cue could be a couple of
18 years before you could get the CR on somebody that you may, you
19 may want to see on the A and B list, and you may not see them.
20 I know the goal is to see them within six months. But you may
21 not see them within six months. What's the outside?

22 MR. HAVELAAR: Well, there are certain ones that
23 automatically go to the top of the cue. The A and B list are
24 the high priority reviews resulting from fatality accidents,
25 are automatically going to go to the top of the cue, and

1 certain other ones, unrated passenger carriers are -- basically
2 take a back seat to the others because the others are higher
3 priority.

4 MS. HERSMAN: And when you do a CR given you have 670
5 plus thousand carriers out there, and you conduct maybe 10,000
6 CRs a year, when you do a CR, is it used as an educational
7 opportunity or as an enforcement opportunity?

8 MR. HAVELAAR: It actually is both. There's an
9 enforcement aspect and a compliance aspect to a compliance
10 review. That's -- the intent is to assess their compliance,
11 assess any inadequacies that they have in their philosophies
12 and their business plan, and then to give them some education
13 and guidance as to what they need to do. Along with that, we
14 have a certain mandate for enforcement, and sometimes
15 enforcement is a necessary tool to submit, submit a long term
16 compliance for the carrier.

17 MS. HERSMAN: Now I'm going to come back when we do
18 the next panel to talk about some of the ratings, and
19 particularly the conditional rating. But in this particular
20 accident, I've read that the driver had 11 safety violations
21 including a speeding ticket, a speeding conviction that was
22 issued in Texas. Are these reflected -- any of these reflected
23 or recorded or do you all know anything about these? Did
24 anything show up on the driver's CDL?

25 MR. MILLER: Well, I'm not sure what you mean by the

1 violations. I don't know that that's not a combination of both
2 that which is found during the roadside inspection process and
3 those moving violations issued by citation.

4 MS. HERSMAN: Uh-huh.

5 MR. MILLER: Those that are collected during the
6 roadside inspection process are part of the motor carrier's
7 overall safety record, and would be captured as part of the
8 company profile within our management information system. With
9 regards to the citation that you reference, that information
10 would be eventually submitted to Mexico to affect the driver's
11 license. The agency has been pursuing a, what we're calling a,
12 by mandate, the 52nd state, if you will, process working
13 specifically with the four primary border states with Mexico,
14 to accommodate receipt of those types of traffic violations so
15 that we can interact with Mexico adequately with that
16 particular information.

17 MS. HERSMAN: Are you familiar with the speeding
18 ticket that I'm talking about?

19 MR. MILLER: That particular ticket, I'm not familiar
20 with.

21 MS. HERSMAN: How about Captain Palmer?

22 CAPTAIN PALMER: Well, I have a copy of the
23 inspection report, where I believe, if it's the one you're
24 referring to in August 2005.

25 MS. HERSMAN: I don't have it right in front of me.

1 CAPTAIN PALMER: Okay. Anyway, yes, I've got the
2 inspection but I can just tell you what's on it.

3 MS. HERSMAN: So I guess my interest is, if you're
4 aware of like a speeding issue, how would that then be recorded
5 on a CDL, not specifically for this driver, but in general?

6 CAPTAIN PALMER: For us, generally what we do is, is
7 this inspection would be transmitted -- ultimately the ticket
8 would be transmitted electronically to our driver's license
9 division and they would process it and insure it got sent to
10 the appropriate state or jurisdiction.

11 MS. HERSMAN: And you know if that occurred, if it
12 was sent on for processing?

13 CAPTAIN PALMER: No, I wouldn't know. That's not
14 something I -- that's not something we normally deal with in my
15 area.

16 MS. HERSMAN: My interest is trying to figure out if
17 the breakdown is in the system in general and so it wouldn't
18 matter whether he had a U.S. CDL or a license -- a federal
19 license in Mexico, is the posting a problem in general or is it
20 specific to the fact that you have the 52nd state issue trying
21 to work through sharing that information?

22 MR. MILLER: We've been working with our state
23 partners for several years on improving their abilities to
24 communicate and transfer out-of-state violations. We believe
25 that that process has been steadily improving over the years

1 and we'll continue to do so over time. Is it a systemic
2 problem? No. Is it a concern? Yes, and we are working for
3 our state partners to improve that in that area.

4 MS. HERSMAN: Can you tell me how many different
5 languages states conduct CDL tests in? I know they have the
6 authority to conduct them in languages other than English.

7 MR. MILLER: I do not have any specific information
8 on how many languages. It would be state specific. So --

9 MS. HERSMAN: And would the states provide
10 information to you all about how many of those CDL tests result
11 in licenses that are actually conducted in a language other
12 than English? Let's say 10 percent of them, 15, you know, 20.
13 Do we have any handle on this? And this goes back to the
14 discussion on the English language issue, trying to define the
15 scope of what's out there.

16 MR. MILLER: I'm not aware of any data specifically
17 reported by the states to us with regards to how many non-
18 English speaking individuals receive the CDL. Certainly during
19 our compliance review process with the states on the commercial
20 driver's license program, that particular issue is looked at
21 and discussed with the state. As far as the actual numbers, I
22 don't have any of that data available.

23 MS. HERSMAN: Do you think AMVA (ph.) might have
24 information on that?

25 MR. MILLER: On the next panel, Member Hersman,

1 Mr. Quade oversees that specific program, specific CDL program.
2 He may have better information with regards to that.

3 MS. HERSMAN: Thank you. and I noted that there was
4 a comment made that the withdrawal of the NPRM on the English
5 language was hard to -- for you all to define the scope of the
6 problem, and I'm just providing anecdotally the NTSB launched
7 on 10 accidents last year and in 3 of them, there was a
8 language issue. You know, we, we, I think, may have to get
9 better about trying to collect some of this information in
10 order to address it if it's a problem. And FMCSA maybe can
11 comment on this. Coach America was putting requests out for
12 other carriers to be able to provide buses and drivers in their
13 contract, their \$32.5 million contract. Would that in essence
14 make Coach America a broker if they are not actually providing
15 the services themselves but they're contracting with other
16 providers to provide services?

17 MR. MILLER: I wouldn't categorize it necessary as a
18 broker. They would be similar as in freight transportation,
19 subcontracting the work. They are a service provider
20 themselves, and would -- it is common practice in the industry
21 that if the particular provider does not have enough number of
22 vehicles to support the request, they may subcontract with
23 another partner company to provide either a bus or a driver for
24 a particular trip.

25 MS. HERSMAN: Do you know if there's any requirements

1 for disclosure if there's a subcontract that goes on, you've
2 contracted with one company and they subbed the work to someone
3 else? Is there any disclosure that another company's being
4 used?

5 MR. MILLER: I'm not aware of a requirement in that
6 regard but I -- and I can't speak to the practices of the
7 industry.

8 MS. HERSMAN: I know that there's requirements for
9 freight forwarders, brokers, motor carriers, to register. Is
10 there -- I know that you have a requirement that you have to
11 live with on the broker registrations for passengers, but do
12 you have any sense as to why freight and passengers don't have
13 the same treatment as far as broker registration?

14 MR. MILLER: I'm not well versed as to why the
15 statutory prohibition is in the statute. It certainly begs a
16 review as to the reasons behind it.

17 MS. HERSMAN: And for the -- for Mr. Maulsby, and for
18 Go Tours. Do you all have any insurance requirements of your
19 own or do you all choose to insure yourselves?

20 MR. MAULSBY: We require all the operators that we
21 work with to carry the minimum \$5 million of insurance plus we
22 clearly have, you know, insurance policies of our own to
23 protect ourselves and to do business.

24 MS. HERSMAN: But nothing required?

25 MR. MAULSBY: There's nothing required statutorily

1 that I'm aware of.

2 MS. HERSMAN: Okay. Thank you.

3 MR. BERSZAS: We also have general liability. We
4 cannot do obviously automobile liability insurance because we
5 don't own or operate vehicles. All of our vendors though, we
6 do require them to carry the \$5 million insurance liability.
7 They do fax that to us, and then we are also asked to be named
8 as an additional insured to that policy as well or to any of
9 our clients that wish so on their insurance as well.

10 MS. HERSMAN: For the aviation side, Mr. Magladry was
11 asking you a question about operating on that side and
12 purchasing tickets. Do you then function as a travel agent on
13 that side, on the aviation side and comply with those
14 requirements?

15 MR. BERSZAS: I don't act as a travel agent. No, we
16 don't sell individual tickets per se. We do offer that service
17 for a group, and then we deal directly with the airlines
18 ourselves.

19 MS. HERSMAN: Are you familiar with the brokerage --
20 the requirements for brokers on the air transport side?

21 MR. BERSZAS: For ARC, brokerage policies and
22 procedures on aviation?

23 MS. HERSMAN: The policies for brokers on the
24 aviation side as far as holding out service, things like that?

25 MR. BERSZAS: I'm familiar with some, not all of the

1 policies.

2 MS. HERSMAN: Okay. Thank you very much.

3 CHAIRWOMAN HIGGINS: Ms. McMurtry.

4 MS. McMURTRY: Yes, ma'am. I have a couple of
5 questions. Sergeant Bridge, do you know on a commercial
6 vehicle accident report, if whether or not the driver speaks
7 English is a data element that is recorded?

8 MR. BRIDGE: I don't believe that that is recorded
9 there.

10 MS. McMURTRY: Okay. This is a question for
11 Mr. Maulsby. You indicated that you employ a private service
12 as do insurance companies do to check the operating status
13 change of a carrier.

14 MR. MAULSBY: That's correct.

15 MS. McMURTRY: Do you know where they get this
16 information?

17 MR. MAULSBY: Their service accessed and amalgamates,
18 you know, various, you know, information from Safestat and
19 other public databases and put it together and provide it to
20 us.

21 MS. McMURTRY: Okay. So they use public databases.

22 MR. MAULSBY: To my knowledge, they do.

23 MS. McMURTRY: Okay. Thank you. That's it. Oh, no,
24 I'm sorry. One more question for Mr. Miller. It's my
25 understanding that in SAFETEA-LU, there's a prohibition of

1 conducting over-the-road vehicle inspections on passenger
2 carriers.

3 MR. MILLER: Yes, there is.

4 MS. McMURTRY: And what, what has your agency done to
5 overcome this in, to overcome this in terms of your oversight
6 responsibilities?

7 MR. MILLER: The -- there is two provisions within,
8 the one that prohibits the en route inspection if you will, and
9 the other one that specifically states that if an obvious
10 defect or other safety concern is present, that immediate
11 inspection and action can be taken. We believe that that
12 particular provision provides us adequate ability to stop a
13 motorcoach in transit, en route if you will, to conduct an
14 inspection as necessary to remove an unsafe condition at the
15 point in time of that inspection.

16 The overarching policy statement or the statutory
17 prohibition against en route inspection has not had a negative
18 effect on our overall motorcoach inspection program, as
19 indicated by I believe over a 30 percent increase in the number
20 of motorcoaches that have been inspected this fiscal year
21 alone, over 2005. So in other words, our states have
22 accommodated or adapted and our federal staff have adapted to
23 the prohibition SAFETEA-LU.

24 MS. HERSMAN: Okay. Thank you. That's all.

25 CHAIRWOMAN HIGGINS: Thank you. I have a few

1 questions. This is for Captain Palmer and I guess for
2 Mr. Bridge, CVSA. When states do compliance reviews, and the
3 State of Texas in particular, and then other states that we
4 have knowledge of, and whether it's an education review or
5 compliance review, is that information public?

6 CAPTAIN PALMER: Yes.

7 CHAIRWOMAN HIGGINS: And so it goes to the FMCSA but
8 it also is maintained on a website for the State of Texas?

9 CAPTAIN PALMER: Well, we don't, we don't have it
10 posted on a website, but it is available to anybody that
11 contacts us. We'll provide the information unless any
12 statutorily requirement information has to be redacted, but
13 we'll release it under our open records laws.

14 CHAIRWOMAN HIGGINS: And how about other states?

15 MR. BRIDGE: I can speak for Connecticut. Our
16 investigators work right directly in the Federal Motor Carrier
17 Safety Administration office in Connecticut. They actually are
18 assigned directly from FMCSA. They do their uploads through
19 FMCSA, and any access to those records would be done through
20 FMCSA. So we truly partner with them right in their office in
21 Connecticut.

22 CHAIRWOMAN HIGGINS: Would this information, for
23 example, the State of Texas review for Global, would that have
24 been available to Bus Bank?

25 CAPTAIN PALMER: Let me clarify, and when I said

1 that, I'm talking about intrastate specific compliance reviews.
2 All the interstate compliance reviews that we do would
3 ultimately be available in the federal database at the
4 websites.

5 CHAIRWOMAN HIGGINS: But I want to be specific here
6 because the question is what Mr. Maulsby has talked about, the
7 need for more information. He's also said that there's only 10
8 percent of operators at least in his system who essentially
9 have had a compliance review, where there's a rating. I would
10 guess that the universe or I would hope that the universe of
11 reviews, compliance reviews done by states would be larger in
12 terms of what they're looking at than the federal review, and
13 my question is, in particular because the review -- Texas
14 review was in 2002, the federal review was in 2004, there's a
15 two year gap there. Would that 2002 review have been available
16 to the Bus Bank if they had asked for it?

17 CAPTAIN PALMER: Yes, because we uploaded it. So
18 however FMCSA would have maintained it, they would have been
19 able to get it that way.

20 CHAIRWOMAN HIGGINS: And in Connecticut?

21 MR. BRIDGE: It would be the same way. If it was an
22 intrastate review, it's still uploaded through FMCSA into their
23 systems.

24 CHAIRWOMAN HIGGINS: Okay.

25 MR. BRIDGE: And if I can just go on, just a little

1 bit more, we direct carriers that call to us in our department,
2 in order to get their information, my understanding in our
3 department is that any carrier can get their carrier profile
4 and get all that information through the Federal Government.
5 And that's -- we direct them in that area, so that they can see
6 all of their inspections that happened across the nation which
7 I believe the carrier profile will include that information
8 from compliance reviews.

9 CHAIRWOMAN HIGGINS: Can you provide that information
10 to a bus broker who is arranging bus transportation for a
11 variety of clients?

12 MR. BRIDGE: I think FMCSA is better to answer that
13 but I believe they can get that right off their website, and it
14 takes a monetary fee for them to get that information, but they
15 should be able to get it.

16 CHAIRWOMAN HIGGINS: Mr. Miller.

17 MR. MILLER: Thank you, Member Higgins. The, the
18 process is twofold. We do make publicly available certain data
19 elements on our websites. We've heard reference to
20 safersys.org. That provides a snapshot of the carrier's
21 overall safety status with us at this time, the current safety
22 rating, who they are, where they are, the commodities
23 transported. The specific violations noted in a compliance
24 review, if an individual would want to get a copy of, the
25 actual hardcopy of the compliance review, they would go to our

1 Freedom of Information Act. We would do as Captain Palmer
2 indicated, the redaction of the Privacy Act type of information
3 from that document and give it to them.

4 On our publicly accessible websites, for any
5 individual carrier, you can drill down into the Safestat
6 information and then further into the results of the compliance
7 review as to which specific violations affected the Safestat
8 score and the like. So I think what you're looking for, in my
9 opinion, is what data is available. The carrier profile or the
10 company profile that we spoke to, anybody in -- anybody,
11 whether they're U.S., Mexico, Canada, any citizen of any
12 country can request a company profile. Again, that would
13 provide the detailed information with regards to prior
14 compliance reviews and the like with the carrier, prior
15 enforcement actions, all the roadside inspection data that we
16 collect in our management information system. All that would
17 be in that company profile short of again the Privacy Act
18 requirements that we have to meet in redacting driver's names
19 specifically in the roadside inspections and some other key
20 Privacy Act information.

21 CHAIRWOMAN HIGGINS: So I think what you're telling
22 me is that it's possible to look behind a numerical or an S or
23 U rating --

24 MR. MILLER: Yes, it is.

25 CHAIRWOMAN HIGGINS: -- to get more specific

1 information about a carrier?

2 MR. MILLER: Yes, it is.

3 CHAIRWOMAN HIGGINS: And it's possible to do that for
4 any citizen?

5 MR. MILLER: Yes, it is, ma'am.

6 CHAIRWOMAN HIGGINS: And has it been possible -- is
7 that a recent opportunity or has that -- would that opportunity
8 have existed last year or in -- when, when Bus Bank first
9 started doing business with Global?

10 MR. MILLER: That our public display of safety
11 information, I don't know the exact year in which we -- I want
12 to say it was in the '97, '98 timeframe, 1997 or 1998, but
13 we've made certain safety data available publicly for some
14 period of time now.

15 CHAIRWOMAN HIGGINS: Including state compliance
16 review data?

17 MR. MILLER: Again, it's important to note that state
18 compliance review on interstate carriers. In Connecticut's
19 situation, they participate in an intrastate process through
20 the PRISM Program which, you know, I don't want to get into
21 that, because I believe that's going to be covered in the next
22 panel, but basically we would capture their intrastate
23 information on intrastate carriers which, as you know, FMCSA
24 has no direct jurisdiction over.

25 CHAIRWOMAN HIGGINS: I understand that, but in this

1 particular accident, the carrier was -- is -- was an interstate
2 carrier.

3 MR. MILLER: Correct.

4 CHAIRWOMAN HIGGINS: So that information would have
5 been available?

6 MR. MILLER: Yes, ma'am.

7 CHAIRWOMAN HIGGINS: And in that same vein of
8 questioning, Captain Palmer, the report, the report from the
9 2002 Texas education review, recommended a follow up compliance
10 review. Do you know whether -- I gather it wasn't done since
11 the --

12 CAPTAIN PALMER: No, there was not one done by us.
13 The first review after that was the one that FMCSA did.

14 CHAIRWOMAN HIGGINS: If a follow up compliance review
15 is recommended, why -- what's the process for acting on that
16 recommendation?

17 CAPTAIN PALMER: Well, I don't know why it wasn't
18 acted on back then. I wasn't, I wasn't in charge of that then.
19 I can tell you now, we would, we would put that in a cue to
20 give some -- give them some time, you know, several months to
21 try to make changes and established basically where --
22 basically to show that they've improved their safety history,
23 and then we would schedule another audit and go back in and
24 conduct a follow up review of that carrier, and we do that, you
25 know, on a fairly regular basis. Most of our -- most of those

1 situations are requests based on the carrier wanting to improve
2 their safety rating from the prior audit, and I'm not aware,
3 I'm not saying it hasn't been done, but I'm not aware of a
4 safety educational contact or review per se being done since
5 that time. It's just -- we don't really have the records to be
6 able to know.

7 CHAIRWOMAN HIGGINS: When you say you don't have the
8 records to be able to know, help me understand that.

9 CAPTAIN PALMER: Well --

10 CHAIRWOMAN HIGGINS: Either a review was done or it
11 wasn't done, and records exist or they don't exist.

12 CAPTAIN PALMER: Yeah, but what I'm saying is that
13 whether it's -- I can tell you like the number of CRs and
14 things like that, but I can't tell you from that far back
15 whether or not, because of our databases, we have improved our
16 databases over the last several years, we used to not collect
17 that detailed data. So -- and now we do.

18 CHAIRWOMAN HIGGINS: Good. I think that's a good
19 thing.

20 CAPTAIN PALMER: I do, too.

21 CHAIRWOMAN HIGGINS: Could we put up Mr. Kotowski's
22 chart please, just essentially the last -- or we can look at
23 the whole chart, but I'm interested in the last slide of that
24 chart. And my question is, there were three reviews done. The
25 first review was the Texas educational review which resulted in

1 an unsatisfactory rating, and I guess, Captain Palmer, do you
2 actually issue ratings?

3 CAPTAIN PALMER: We do issue ratings for intrastate
4 carriers, and FMCSA issues the ratings if it's an interstate
5 carrier.

6 CHAIRWOMAN HIGGINS: But this -- Global I gather is
7 both, correct?

8 CAPTAIN PALMER: Yes, they operated both.

9 CHAIRWOMAN HIGGINS: So you had issued them an
10 unsatisfactory rating.

11 CAPTAIN PALMER: Not, not during the educational
12 review because that's an unrated --

13 CHAIRWOMAN HIGGINS: But if a review -- let me
14 rephrase my question. If your review had been rated, at least
15 as I understand it, they would have been rated unsatisfactory.

16 CAPTAIN PALMER: It's my understanding from talking
17 to Mr. Kotowski, that he had ran it in CAPRI, and that based on
18 the information in the educational review, that it would have
19 been an unsatisfactory rating today.

20 CHAIRWOMAN HIGGINS: So when you do educational
21 reviews, do you roll it up in any way? You don't issue a
22 rating? You don't --

23 CAPTAIN PALMER: No, and that's just because -- maybe
24 Mr. Miller can answer better, but it's -- the program does not
25 rate an educational review, the CAPRI Program.

1 CHAIRWOMAN HIGGINS: I'm not familiar with the CAPRI
2 Program.

3 MR. MILLER: What Captain Palmer is referring to, is
4 when our investigators conduct a compliance review, they use a
5 software package called CAPRI, to capture all the violation
6 information, the census information about the motor carrier.
7 That particular software package has an algorithm within it
8 that at the, at the end of the compliance review, during the
9 closeout process, the facts of the findings of the
10 investigation are provided to the motor carrier, inclusive of
11 the violations found, the recommendations provided, and some
12 guidance as to their due process with regards to the results of
13 that compliance review, one of which is the proposed rating.
14 In this particular instance, the proposed rating would have
15 been unsatisfactory. However, the investigator at that time
16 marked it as a non-ratable educational contact review, thus,
17 sub-planting the rating process of that particular review. In
18 other words, it did not -- the unsatisfactory rating did not
19 get issued then because of that particular indication.

20 CHAIRWOMAN HIGGINS: But the investigator at the
21 time, are you referring to the state investigator or the
22 federal investigator?

23 MR. MILLER: The state investigator in 2002.

24 CHAIRWOMAN HIGGINS: This information was provided to
25 FMCSA.

1 MR. MILLER: I understand, yes. The way our software
2 packages work, we have several different review types within
3 the software. The investigator tells us whether or not, for
4 example, it's going to be simply a compliance review, whether
5 or not it's going to be a safety audit, whether or not it's
6 going to be a household goods review, different varieties of
7 combinations of review types. Based on that type of review,
8 for example, we do not issue intrastate hazardous materials
9 carriers. They are not rated. The investigator would mark
10 that particular review as that's the type of review we are
11 doing, and thus do not, regardless of the results of the
12 violations noted, do not issue the rating because that
13 particular carrier is not subject to the safety fitness
14 determination process.

15 In this particular instance, while the carrier was
16 subject to the safety fitness determination process, the
17 investigator marked it as educational, do not rate. Thus, when
18 we received it in our information system, our systems did not
19 issue the rating at the behest of the investigator.

20 CHAIRWOMAN HIGGINS: I think I understand. I guess I
21 find that of some concern since we've heard that these -- this
22 information -- first of all, that the state information is made
23 available to the public through FMCSA, and then we've heard
24 that this information, that this rating system, the FMCSA
25 rating system, is looked at by the bus brokers, in this

1 particular case and presumably others who are making decisions,
2 and what you're -- I think what you're saying to me is that
3 even though a review might have gone on that would have
4 produced an unsatisfactory rating, that isn't really -- that
5 rating is not really available to the public, and it's not.

6 MR. MILLER: I believe I understand your question.
7 In that particular instance, that is exactly what happened.
8 It's important to note though, that the violation data that was
9 noted on that review was incorporated into the Safestat process
10 in overall monitoring of the motor carrier, inclusive of
11 overarching monitoring processes. The unfortunate circumstance
12 as to why that particular review was not rated, I can't speak
13 to the specifics of those decisions.

14 CHAIRWOMAN HIGGINS: Then we did a compliance review
15 in 2004, FMCSA did, and they -- this Global Tours was found
16 satisfactory in essentially all categories that were relevant.
17 Can you help me understand how there could be such a marked
18 change in two years? And looking again at Mr. Kotowski's
19 chart, and several things were rated, I don't fully understand
20 all the categories but just take the example of drug and
21 alcohol program. There was no drug and alcohol testing program
22 in 2002. In 2004, there was a failure to provide drivers with
23 drug and alcohol policies, failure to have persons trained for
24 reasonable suspicion, but somehow that didn't result in an
25 unsatisfactory rating. In 2005, there was no drug and alcohol

1 testing program. Can you help me why there would be that type
2 of discrepancy?

3 MR. HAVELAAR: Actually in 2005, they did have a
4 program. They were similar to the 2004 review. They were
5 cited for being lax in certain elements of that program. In
6 the earlier review in 2004, they had no program at all. They
7 instituted the program, but they didn't have all the elements
8 there, and so what was cited in 2004 and 2005 were specific
9 elements that they were missing.

10 CHAIRWOMAN HIGGINS: So then we need to correct this
11 chart. So you're saying in 2004, when you did the review, they
12 had no drug and alcohol testing?

13 MR. HAVELAAR: In 2004, they did have one.

14 CHAIRWOMAN HIGGINS: They did?

15 MR. HAVELAAR: Yes. They were just missing certain
16 components of it.

17 CHAIRWOMAN HIGGINS: Okay. What about some of the
18 other areas where there's discrepancies?

19 MR. HAVELAAR: Well, the difference between the
20 educational contact and the 2004 review were primarily in the
21 driver qualification area, and I believe in the hours of
22 service area.

23 CHAIRWOMAN HIGGINS: And logs, was that an issue?

24 MR. HAVELAAR: Yeah, logs are part of the hours of
25 service. Preparing the logs, submitting the logs, reviewing

1 the hours of service. For the most part, those are
2 determined -- compliance with that is determined via paperwork,
3 that if they have the proper systems in place, they have the
4 proper paper flow, it's an indication that the systems are
5 there. The consultant that they used following the 2002
6 education contact was, was very well aware of what those
7 requirements were. And so he was able to bring the carrier
8 into compliance with the paperwork portions of those, that then
9 reflected into satisfactory in those two areas.

10 CHAIRWOMAN HIGGINS: In the maintenance area, we've
11 heard a lot yesterday about the issues of maintenance and
12 bearings. Again, if our chart is correct, I hope it is,
13 failure -- in 2004 -- maintenance was an issue in 2002.
14 Maintenance, failure to have a schedule for vehicle inspection
15 and maintenance was an issue in 2004. Maintenance in 2005.
16 How, how significant is that in terms of getting a rating?

17 MR. MILLER: Again, the safety rating is developed
18 based on the results in all six factors that we review, the
19 comprehensive review of the overall management practices for
20 the company. The violations, violations of critical or acute
21 regulations during the compliance review would effect factor 4
22 which is the vehicle factor in our rating process. A
23 combination of these citations of a critical or acute
24 regulation in concert with over-the-road performance of an out-
25 of-service rate of 34 percent or more, would lead to an

1 unsatisfactory rating in factor 4, and thus an automatic
2 overall rating of conditional for the motor carrier.

3 CHAIRWOMAN HIGGINS: We could spend all day on this,
4 and I won't do that because it's already past our time for our
5 lunch break. I just have a couple of other areas. The English
6 language issue, when a full -- we've heard a lot about the fact
7 that according to the 1936 Congressional conditional
8 requirements, the way the regulations works, it's the
9 responsibility of the operator to deal with that issue. How --
10 is that issue looked at in compliance reviews?

11 MR. MILLER: Yes. During the compliance review
12 process, as they're reviewing driver records, what, what we're
13 looking at are citations on the roadside inspections indicating
14 there was a performance problem at the roadside, whether that
15 be out of service or not. That's part of the review process in
16 selecting drivers. If, if the investigator at the time of the
17 review has the opportunity to interview drivers, they will, and
18 if during that action they determine that there's an English
19 proficiency issue, they will cite the violation on the
20 compliance review, and if they believe it meets a significant
21 safety concern for the motor carrier and the traveling public,
22 they will take enforcement action as necessary and have that
23 authority and have taken enforcement action in that area.

24 CHAIRWOMAN HIGGINS: So it's not required in a
25 compliance review to interview the drivers?

1 MR. MILLER: Again, it's not a specific requirement.

2 Understanding that the majority of the industry in which we
3 regulate are very small operators, you know, less than 10, less
4 than 5 vehicles and drivers, most of the vehicles and drivers
5 are actually out performing their daily activities, delivering
6 product to customers or passengers to their locations at the
7 time of the compliance review. Thus, they're not available to
8 our investigators at all times. One of our statutory mandates
9 is not to -- our review process is not to impede commerce. So
10 when -- if we believe that during the compliance review process
11 that we do need to speak to a driver, we will extend our time
12 with that motor carrier until such time as we can get to the
13 driver or the vehicle as necessary.

14 CHAIRWOMAN HIGGINS: In my reading of the regulations
15 and the rules around this, it seems to me they're pretty basic.
16 If you're driving a commercial vehicle, you have to be able to
17 communicate in English and essentially be able to understand
18 and -- so that you can drive safely. Help me understand how
19 somebody who doesn't speak English, and doesn't presumably read
20 English, can operate in interstate commerce without a facility
21 to either communicate with passengers or to read road signs in
22 the English language?

23 MR. MILLER: The highway signing processes that we
24 use are designed around international standards. We try to get
25 the international uniformity in that regards. So that

1 particular aspect of understanding road signs and the like, you
2 know, necessarily being able to speak English may not be
3 necessary to read the road signs. Communicating with
4 individuals is important as Sergeant Bridge indicated that
5 during the inspection process, you know, obviously
6 communication becomes an issue. But specifically not being
7 able to speak English, I don't have enough data to speak to the
8 actual impact of what that does to crash risk. I really can't
9 speak to that specifically.

10 CHAIRWOMAN HIGGINS: Okay. And could I -- a final
11 question for Mr. Maulsby and our other bus broker. Were you
12 aware before this hearing of the number of bus fires that were
13 occurring? Do you have any knowledge in terms of your own
14 operators of the bus fire issue?

15 MR. MAULSBY: I don't have firsthand knowledge of
16 specific bus fire issues. I mean I'm part of the Bus Industry
17 Safety Council. So I'm aware of things we need to think about
18 in this industry, but I don't have the specific, you know,
19 statistics.

20 MR. BERSZAS: I was not aware as well.

21 CHAIRWOMAN HIGGINS: Okay. And then finally the
22 issue that I was asking Captain Palmer and Mr. Bridge about, in
23 your looking at the FMCSA database, have you looked at all at
24 state ratings, state inspection reports on your operators?

25 MR. MAULSBY: We primarily depend on the federal

1 FMCSA Safestat System. On an exception, we may look at it but
2 we really look at the Federal Motor Code, you know, the Federal
3 Motor Carrier Safety Administration because --

4 CHAIRWOMAN HIGGINS: I understand that. My question
5 though it there are -- we've just heard that all the state data
6 gets rolled up and these state inspections get rolled up into
7 the Safestat System, the FMCSA database but that it is possible
8 to look behind the rating more specifically at individual
9 operators and carriers. I'm asking if you have ever done that
10 for your operators or have you just relied on the rating.

11 MR. MAULSBY: We have primarily relied on the rating,
12 and obviously as we continue to do business and understand the
13 universe better of the data we're looking at, you know, we'll
14 start to hopefully look deeper.

15 MR. BERSZAS: We have also looked at the overview and
16 have dived a little more into detail but we seem to find that
17 there's not a necessary need to look more detailed -- into the
18 details of the state, and then we also look at the insurance
19 aspect to it as well, and how often do they change insurance
20 carriers as well.

21 CHAIRWOMAN HIGGINS: Okay. Thank you. Are there any
22 other questions from the parties or from my colleagues?

23 MS. HERSMAN: I promise to make it quick.
24 Mr. Berszas and Mr. Maulsby, do you all differentiate between
25 satisfactory and conditional ratings and would you use carriers

1 that had conditional ratings?

2 MR. MAULSBY: We clearly differentiate between
3 satisfactory, conditional and unsatisfactory, and our answer is
4 no, we don't use an operator who is not satisfactory.

5 MR. BERSZAS: We only use satisfactory as well.

6 MS. HERSMAN: Thank you.

7 CHAIRWOMAN HIGGINS: It's been a long morning. And
8 we will -- we've got a lot to cover this afternoon. It is now
9 1:23 by the official clock at the back of the room. I would
10 hope everybody could be back here by 2:00, so we could begin
11 promptly at 2:00. Thank you.

12 (Whereupon, at 1:23 p.m., a luncheon recess was
13 taken.)

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A F T E R N O O N S E S S I O N

8

(2:00 p.m.)

9

MR. QUADE: -- the MCSAP Program, the Commercial Driver's License Program and the North American Borders Program in providing input into other enforcement and compliance programs for the agency. I've been with the agency for 14 years.

14

MS. McMURTRY: Okay. And for the record, your office is across the -- is in 400 Seventh?

16

MR. QUADE: Yes, I'm at 400 Seventh Street, Southwest.

18

MS. McMURTRY: Okay. Thank you. And Mr. Price.

19

MR. PRICE: Bryan Price. I've been with the Federal Motor Carrier Safety Administration for 16 years. Right now I'm a Technical Program Manager with our Safestat Program, also work with the states on our federal/state PRISM Project which is basically a project where we're linking the state truck licensing agencies with our federal databases.

25

MS. McMURTRY: And you are also across the street?

1 MR. PRICE: Yes.

2 MS. McMURTRY: Okay. Thank you very much. Member
3 Higgins, the witnesses on Panel 7 have been sworn and are
4 qualified, and we'll turn the questioning over to Pete Kotowski
5 and Julie Perrot.

6 CHAIRWOMAN HIGGINS: Thank you. Please begin.

7 MR. KOTOWSKI: In this Panel, discussion will examine
8 the actions of the FMCSA concerning open recommendations, the
9 New Entrant Program and Safestat issues.

10 To the FMCSA, can you describe the purpose of
11 Safestat?

12 MR. PRICE: Yes. Our underlying safety mission is to
13 save as many lives and reduce as many injuries as we possibly
14 can out there. With a regulated population of roughly 700,000
15 interstate carriers, and limited resources in the field, one of
16 the things we have to do is make sure we get the most bang for
17 our buck when we go out and knock on a carrier's door. In
18 other words, we need to make sure we're going to see the right
19 company. Safestat is a system we use that pulls in all the
20 accident data that's supplied to us from the states, the
21 roadside inspection data, all the compliance review data, to
22 help us make sure we're picking the right carriers when we make
23 a decision to go out and visit somebody.

24 At the same time, select Safestat data is posted on
25 the Internet and is regularly updated. It's updated every

1 month, and that really helps us insure the motor carrier
2 industry is held accountable and sustains a level of compliance
3 over time.

4 MR. KOTOWSKI: And where does the inspection and
5 accident information utilized in Safestat come from?

6 MR. PRICE: It's uploaded to us by the states that
7 are participating in our Motor Carrier Safety Assistance
8 Program Grant Program.

9 MR. KOTOWSKI: And could you briefly describe how the
10 Safestat System operates?

11 MR. PRICE: Okay. Basically the algorithms runs
12 every month. What it does is take a picture of every company
13 in our census, determine if we have sufficient data on them.
14 If we do have sufficient data, it generates values in four
15 different safety evaluation areas. I believe we have a slide
16 that we may want to pull up at this point, as long as we're --
17 yeah. As you can see here, there are four different evaluation
18 areas in the Safestat System, accident, driver, vehicle and
19 safety management.

20 As I said, each month the algorithm takes a picture
21 of the data that we have, and it develops an assessment on each
22 carrier in these four areas. Any company that has enough data
23 to be scored is evaluated, and then anybody -- basically what
24 these numbers represent are percentile rankings. So what a 95
25 in the accident area would mean is that company has worse

1 accident performance than 95 percent of the companies that we
2 have enough data to evaluate.

3 And basically the bottom line is, a higher a
4 company's Safestat score, the higher they're going to be on our
5 priority list.

6 MR. KOTOWSKI: The accuracy of the state supplied
7 information has been the subject of criticism in the past.
8 What is the FMCSA done to correct these problems?

9 MR. PRICE: Well, we understand the importance of
10 accurate data, and how it helps us do a better job of insuring
11 we're getting to the right carriers. And because of that,
12 we've made accurate data one of our highest priorities in the
13 agency.

14 Just some of the things that we've done in the last
15 few years, we established a Safety Data Quality Map for each
16 month. We're taking a look at the accuracy and the
17 completeness and the timeliness of data that we're getting in
18 from the states. We've also established an online system
19 called Data Qs that allows the motor carrier industry to take a
20 look at their data, file challenges if they have them, to any
21 concerns they might have with data that we have attributed to
22 their record, and on top of all that, we've also established a
23 program, Congress recognized the importance of quality data as
24 well, and authorized up to \$11 million for safety data
25 improvement grants. So we're going out to the states that

1 we've identified as having problems and offering safety data
2 improvement grants to them.

3 MR. KOTOWSKI: What oversight policies are in place
4 to monitor the program for accuracy in the future?

5 MR. PRICE: Well, one of the points I'd like to make,
6 just for the record, is that the accuracy of the data has never
7 been as problematic as the completeness of the data,
8 particularly the crash data. But with regard to the accuracy
9 itself, as I've mentioned, we've established these state Safety
10 Data Quality Maps. One of the things we do every month is look
11 at the accuracy of the data we're getting in from the states.
12 We look at the accuracy of the crash data, in other words,
13 whether or not we're able to match it up with the carrier in
14 our census. We're also looking at the accuracy of the
15 inspection data as well.

16 MR. KOTOWSKI: Recently there have been two studies,
17 one conducted by the Office of the Inspector General and one by
18 the General Accounting Office, concerning changes that the
19 FMCSA has made to the Safestat Program. What is the status of
20 these new reviews?

21 MR. PRICE: There are several reviews that -- well,
22 there's one that's been completed by the OIG that they issued
23 in February 2004, and subsequently there was an additional
24 review initiated by the GAO. The GAO review is ongoing right
25 now, and there's a follow up -- it's not a full scale

1 investigation, but the OIG was asked to take a look at the
2 progress we've made specifically in terms of data quality, and
3 both the OIG effort and the GAO effort are still ongoing.

4 MR. KOTOWSKI: Are there any interim procedures in
5 place to address those concerns expressed in the previous
6 reviews?

7 MR. PRICE: Yes, there are. One of the things that
8 we did was after the OIG review in 2004, was we temporarily
9 removed the accident assessments and overall score from our
10 Safestat online website. Now in doing that, one of the
11 decisions we made was to leave up the driver assessments, the
12 vehicle assessments and the safety management assessments. If
13 you remember, the Safestat process is made up of four different
14 evaluation areas. Because the major concerns were in the
15 accident area, that's the data that we took down.

16 And even with that, we didn't take down the details.
17 We just took down the assessment. In other words, you can
18 still pull up ABC Trucking online, drill down into their data
19 and see that they've had five crashes, drill down further to
20 look at the dates of those crashes, the location, things of
21 that nature. I --

22 MR. KOTOWSKI: Now -- I'm sorry.

23 MR. PRICE: I would point out that since we did take
24 down the accident assessments and overall scores, just in a one
25 year period, we still had roughly 1.7 million hits on that

1 website.

2 MR. KOTOWSKI: And are there plans to restore the
3 accident, C value, in the overall Safestat score?

4 MR. PRICE: There are plans to do so. In fact, we've
5 made significant progress in data quality since the 2004 IG
6 report, and we were contemplating actually putting that data
7 back on, mentioned that fact to our stakeholders including the
8 American Trucking Association, and shortly thereafter, the GAO
9 audit which is ongoing was initiated, and one of the things
10 that we've kind of gone on record with, with the American
11 Trucking Association is stating is that, we're going to wait
12 for the results of that GAO report and the IG follow up before
13 we post anything.

14 MR. KOTOWSKI: And does the FMCSA have the authority
15 to withhold funds from states if they are not in compliance
16 with the data that's required for Safestat?

17 MR. PRICE: We do have the authority to do so. We've
18 never chosen to take that route. Our general belief is that if
19 we withheld funds, it would actually make the problem worse
20 rather than better. One of the things that we are doing now
21 is, again as I mentioned, taking a look at the states data
22 quality each month and the states that are identified as red
23 states, the states that are having problems, we're focusing our
24 data improvement efforts and the idea of safety data
25 improvement grants with them.

1 MR. KOTOWSKI: Thank you. To the CVSA. What is the
2 state's role in the FMCSA New Entrant Program?

3 MR. BRIDGE: Connecticut, as well as some of the
4 other states, we partner with FMCSA to schedule and conduct
5 safety audits. We also schedule other outreach activities that
6 are part of the New Entrant Program. That states conduct a
7 significant number of the safety audits that are required for
8 interstate motor carriers.

9 MR. KOTOWSKI: And when is the safety audit conducted
10 of a New Entrant carrier?

11 MR. BRIDGE: The safety audit is conducted within 18
12 months of a business' initial registration with FMCSA and
13 getting their USDOT Number. Many of the states have attempted
14 to conduct the audits within a shorter timeframe, and a number
15 of the states have New Entrant Programs, New Entrant Programs
16 for intrastate motor carriers as well.

17 MR. KOTOWSKI: Is there an average time of when these
18 reviews have been conducted?

19 MR. BRIDGE: I don't have that average time in front
20 of me but again, the goal is to get them before 18 months.
21 That's the regulation.

22 MR. KOTOWSKI: And during the safety audit, does the
23 inspector inquire about the motor carrier's knowledge of the
24 Federal Motor Carrier Safety Regulations?

25 MR. BRIDGE: One of the basic premise of the safety

1 audit is to assess the motor carrier's safety performance and
2 their knowledge of the Federal Motor Carrier Safety
3 Regulations, to provide educational and technical assistance
4 and to document those findings and any deficiencies discovered.
5 They also provide obviously website links, educational
6 materials and other helpful resources for that motor carrier
7 during the course of the audit.

8 MR. KOTOWSKI: And what happens to a New Entrant
9 carrier if they fail the safety audit?

10 MR. BRIDGE: Typically FMCSA will notify the motor
11 carrier within 45 days of completing the safety audit that the
12 DOT number for the New Entrant registration will be revoked
13 unless the motor carrier takes corrective actions and supplies
14 compelling evidence to fix certain problems discovered during
15 the audit. The revocation takes effect within 45 days of
16 receipt for motor carrier's transporting passengers, and
17 designed to transport 16 or more passengers which includes the
18 driver, as well as for motor carriers transporting placardable
19 amounts of hazardous materials. For all other carriers that
20 limit is 60 days.

21 MR. KOTOWSKI: And what are the ratings that are
22 given as a result of a safety audit?

23 MR. BRIDGE: There are no ratings with a safety
24 audit. It's a pass or fail criteria.

25 MR. KOTOWSKI: It's a pass or fail criteria. Thank

1 you. To the CVSA -- I'm sorry -- to the FMCSA. The FMCSA
2 initiated a New Entrant Program in January of 2003. Since that
3 time, how many new carriers have entered the New Entrant
4 Program?

5 MR. QUADE: Over 200,000.

6 MR. KOTOWSKI: And can you describe the New Entrant
7 Program?

8 MR. QUADE: Sure. I'd be happy to. I have a slide,
9 and my slide speaks a little bit toward -- to your first
10 question to Sergeant Bridge with respect to, you know, what's
11 the state's role in the New Entrant Program.

12 In describing the New Entrant Program, I couldn't
13 describe it without making you aware that it's been Congress'
14 desire that the states implement the New Entrant Program.
15 They've given us special funding through our Motor Carrier
16 Safety Assistance Grant Program, our MCSAP Program, to provide
17 to the states. It's 100 percent funding to get the states on
18 board, and as this map shows, the states have risen to the
19 challenge. The green states are states that are doing over 90
20 percent of the audits in their states. Yellow is over --
21 between 50 and 90 percent. So you can see that as a whole, the
22 states have really risen to the challenge that FMCSA and
23 Congress has put before them.

24 The New Entrant Program is a, is a program to visit a
25 carrier when they begin business within the first 18 months of

1 when they begin business and to educate them about the
2 regulations that apply, as well as to perform an audit to make
3 sure that the carriers have the basis, you know, minimum safety
4 requirements in place in order to operate safely.

5 MR. KOTOWSKI: On September 20, 2004, the Safety
6 Board investigated an accident in Sherman, Texas, that resulted
7 in 10 deaths. The motor carrier was classified as a New
8 Entrant, and as part of the New Entrant Program, the motor
9 carrier was subjected to a safety audit on May 24, 2004, and
10 received a finding of pass. The motor carrier had failed three
11 critical questions in the driver category that included driver
12 qualification files, drug and alcohol testing. The finding of
13 pass indicated that the new motor carrier was compliant with
14 the safety fitness standard. Vehicle inspections were not
15 considered in this audit. The post-accident compliance review
16 resulted in a conditional safety rating. A conditional safety
17 rating indicates that the motor carrier does not have adequate
18 safety management controls in place, and that the carrier has
19 the potential to violate the safety fitness standard. Does the
20 FMCSA have a review program to examine the consistency of the
21 New Entrant Program as compared to the compliance review
22 programs?

23 MR. QUADE: Well, let me begin by saying that the --
24 it's not unusual for a safety audit and a compliance review to
25 produce different results. The two visits have differing

1 purposes. The main purpose of a safety audit is an educational
2 tool. We take a minimum sample of records to insure that the
3 minimum requirements are present but it's not an in depth
4 review, where as our compliance review is an in depth focused
5 review of the carrier safety practices.

6 The reason I think we should explain a little bit
7 about the reason behind the agency's decision in, in focusing
8 the New Entrant Audit on a safety process, a New Entrant Audit
9 takes an average of two to four hours, whereas a compliance
10 review will typically take two to three days and can take as
11 many as five or even more.

12 We have 6, over 700,000 interstate motor carriers to
13 regulate including 35,000 New Entrants a year. Given the
14 resources that the agency has, we deemed it appropriate for new
15 carriers to do an educational visit to let them know what the
16 regulations are. It is our experience, a couple of things,
17 first, that by having a FMCSA or a state inspector walk through
18 the door, we have impacted safety. Just by making a visit.
19 And second, that most carriers want to comply with the
20 regulations and by educating them, we are achieving a safety
21 goal which is our agency's mission.

22 MR. KOTOWSKI: And has the FMCSA considered revising
23 the New Entrant Safety Audit?

24 MR. QUADE: The Federal Motor Carrier Safety
25 Administration is always looking for ways to improve our

1 processes. And not only have we considered revising the New
2 Entrant Safety Audit, we have begun work on revisions of the
3 New Entrant Safety Audit. As published in our regulatory
4 agenda, we are working on a notice of proposed rulemaking to
5 propose changes to the New Entrant safety assurance process in
6 order to focus more on compliance, to make compliance with the
7 regulations a larger part of the New Entrant Safety Audit.

8 MR. KOTOWSKI: And has that notice been issued?

9 MR. QUADE: That notice has not been issued. It is
10 been written and is in departmental concurrence.

11 MR. KOTOWSKI: Is there an estimated time of when
12 that notice would be released?

13 MR. QUADE: I believe it should be released later --
14 in late fall.

15 MS. PERROT: Good afternoon. I'm going to turn now
16 to three specific open safety recommendations. So my questions
17 will be addressed to FMCSA. First of all, I want to talk about
18 the carrier registration program which is our recommendation H-
19 93-28. I'll go ahead and read this for those who don't have a
20 list in front of them. We asked that the FMCSA -- that the
21 FHWA at the time, now it's become the FMCSA, develop a
22 systematic and continual process of identification of carriers
23 subject to the Federal Highway Administration's jurisdiction
24 that includes the immediate entry of new carriers onto the
25 motor carrier management information system, systematically

1 accessing available state record systems and maintaining
2 contact with the Interstate Commerce Commission concerning new
3 motor carriers, and to devise a method of clarifying that the
4 process results in the identification of the enter carrier
5 population.

6 So my first question is, is there a system currently
7 that identifies the motor carrier census for safety program
8 analysis?

9 MR. PRICE: Yeah, our system for safety analysis is
10 our motor carrier management information system --

11 MS. PERROT: Okay.

12 MR. PRICE: -- that we have right now.

13 MS. PERROT: And next, how are new carriers currently
14 registered into the FMCSA database?

15 MR. PRICE: When a carrier comes into business right
16 now, they fill out what's called a MCS150 form. It's basically
17 an application with general information, their carrier name,
18 their address, the number of trucks they operate, commodities
19 they transport, things of that nature. As a new carrier, they
20 also fill out what's known as a MCS150A which is basically just
21 a question and answer form to make sure that they're familiar
22 with the minimum requirements of the Federal Motor Carrier
23 Safety Regulations. That information is then entered into our
24 main MCMIS database. There are a couple of options that
25 carriers can use to do that. They can file paper forms. They

1 can apply directly online now, and a third way they can do it
2 is also through the states that participate in our
3 federal/state PRISM Program, they go into a state truck
4 licensing agency to apply for plates, don't have a USDOT
5 number, they can apply there.

6 MS. PERROT: Are established motor carriers required
7 to update their FMCSA registration information?

8 MR. PRICE: Yes, they are. In fact, our regulations
9 require that they update their MCS150 data every two years, and
10 over the last few years, we've seen a marked up tic in the
11 number of carriers that are complying with that requirement.
12 We've started doing some enforcement actions requiring them to
13 do so, and if we can pull up the PRISM slide, I'd also like to
14 demonstrate one thing there. Can we go back one? One more.

15 Okay. One of the features of our PRISM Program, and
16 again we've got 43 states. It's not a small number that have
17 signed grant agreements to implement the PRISM Project. One of
18 the things they do now as part of their heavy truck license
19 plate renewal process is check the carrier's MCS150 date of
20 last update, and to make a long story short, if the data is out
21 of date or it's going to expire before the license plates
22 expire, they'll actually deny the license plates, and we've got
23 roughly 25 states that are doing that now.

24 If you could go to the next slide. I just thought it
25 would be helpful, while it's really not readable on the slide,

1 but this is just a picture out of the State of Minnesota's
2 registration system which again, just to serve as an example,
3 shows that it would flag the registration clerk not to issue
4 the license plates until the MCS150 data was updated.

5 MS. PERROT: Okay. What are the penalties if a motor
6 carrier does not comply with these biannual updates?

7 MR. PRICE: Well, in the states that are
8 participating in the PRISM Program, it's pretty much you don't
9 get your license plates renewed. On top of that, we've also
10 got our own authorities and we're starting to issue fines to
11 carriers, and those penalties are in the neighborhood of \$550
12 per day up to \$5500.

13 MS. PERROT: Given past problems with the motor
14 Carrier Registration, you've indicated that Unified
15 registration system, known as the URS, will address registering
16 all entities subject to FMCSA jurisdiction. Could you talk
17 about the goals of the URS?

18 MR. PRICE: Sure. Really one of the primary goals of
19 the URS is to kind of tie together some of our information
20 systems that are set out in separate spots right now, and by
21 separate systems what I'm talking about is our Motor Carrier
22 Management Information System, our main FMCSA database and our
23 licensing and insurance database that we inherited from the ICC
24 back in the mid to late nineties. So that's one of the primary
25 objectives of it, is to combine those information systems into

1 one information system.

2 At the same time, I think it's fair to say that one
3 of the objectives is to also kind of tighten up our issuance of
4 DOT numbers so that we can do certain things like verify that a
5 carrier has the proper level of insurance, verify that they
6 have operating authority if, in fact, they need it before we
7 issue the number.

8 MS. PERROT: And could you describe the intended URS
9 process?

10 MR. PRICE: Well, to some extent. We published a
11 notice of proposed ruling making back in 2005 that laid out
12 what our intended or at least our proposed URS process was.
13 Shortly after we put out our notice of proposed ruling making,
14 SAFETEA-LU added several very specific requirements to our URS
15 process. So right now we're kind of stepping back and the next
16 step in our process is likely going to be the issuance of a
17 supplemental notice of proposed rulemaking to take into account
18 these new things that SAFETEA-LU brought into the picture.

19 MS. PERROT: And does the URS identify all of the
20 carriers subject to its jurisdiction?

21 MR. PRICE: That's certainly one of the objectives,
22 to make sure that we have an accurate and complete census of
23 everybody that we have oversight responsibilities for.

24 MS. PERROT: And SAFETEA-LU requires that a board be
25 convened to develop, implement and administer a system to

1 replace the SSR, and we're wondering what the status of this
2 board process is currently?

3 MR. PRICE: I believe it was last April we actually
4 named the UCR Board of Directors. The UCR Board of Directors
5 has gotten together twice already to start on the work as you
6 said, replacing the SSRS system. One of the more difficult
7 things that the Board is faced with right now is establishing
8 what the proper fee is going to be for the new carriers that
9 previously weren't subject to SSRS that will be subject to this
10 UCR program. And we have another meeting of the UCR Board is
11 scheduled for the latter part of August.

12 MS. PERROT: The MCS150 registration form which is
13 completed by the motor carrier and is then submitted to you
14 either by mail or electronically, as you've already explained,
15 we're wondering if this -- does the FMCSA have a program to
16 verify the accuracy of the registration information?

17 MR. PRICE: We do. A couple of things we're doing.
18 As I mentioned, I think one of the more promising long-term
19 approaches we have is through our PRISM Program. You know,
20 when a carrier fills out their MCS150 data as part of their
21 license plate renewal, if, you know, they put they have five
22 trucks on their MCS150, then it only makes sense they would
23 have five trucks that they're renewing license plates for.

24 At the same time, we're building edit checks into our
25 system to basically check for the reasonableness of the data

1 that the carriers are entering in, more or less flag us. It's
2 part of the Safestat process. When we run the Safestat results
3 each month, one of the things that our analysts at the Volpe
4 National Transportation Center do is they identify any
5 anomalies, anything that might jump out, a carrier that lists 1
6 driver and 500 trucks, is obviously something we want to take a
7 look at, and then we follow up on those things.

8 MS. PERROT: And what happens to those records after
9 they've been collected? The submitted forms.

10 MR. PRICE: What we'll do is we just recently
11 established a process where we'll turn those over to our
12 contractor, Consolidated Safety Services, that's starting to
13 set up New Entrant Safety Audits, and actually call the
14 carriers to verify the accuracy of it.

15 MS. PERROT: And do you keep a copy of the submitted
16 forms?

17 MR. PRICE: The forms submitted by the carrier?

18 MS. PERROT: Yes.

19 MR. PRICE: It depends if they do a hard copy or
20 electronically. If they submit hard-copy MCS150 forms, I
21 believe we do scan those in and maintain them. Electronic,
22 obviously if they do it online, then we're going to have a
23 record of when they did it, what time they logged into the
24 system and that kind of thing.

25 MS. PERROT: And what happens if the company goes out

1 of business?

2 MR. PRICE: Oftentimes when they go out of business,
3 they'll submit a letter to us letting us know that, and we'll
4 basically inactivate their USDOT number in our census.

5 MS. PERROT: And does the program include a process
6 to identify cases in which a company goes out of business and
7 then comes back into business under a different name but with
8 the same owners?

9 MR. PRICE: Well, as part of the URS process, one of
10 the things that we're contemplating as part of the new
11 application is basically the field is asking if the person
12 applying for the new USDOT number is affiliated with a prior
13 company. So we're going to be trying to gather that
14 information as part of the application process in the URS, but
15 what we really think again is one of the more promising
16 approaches to addressing the name change is through our PRISM
17 Program. Can you pull up the PRISM slides again please? Okay.
18 If you go ahead and go to the next slide.

19 One of the things that we do through our PRISM
20 Program, and again working with the state truck licensing
21 agencies, is basically we tie to every single vehicle that's
22 registered through the state DMVs a USDOT number to that
23 vehicle, and that USDOT number is intended to represent the
24 carrier that's going to be responsible for the safety of that
25 truck during the registration year. Okay. And if that

1 particular company happens to get placed out of service by
2 FMCSA, that data is fed down to the state DMVs.

3 Well, as we know oftentimes what happens, when we
4 place a company out of service, they may try and re-incorporate
5 under a different name, get a USDOT number, we're starting to
6 catch these companies through this partnership with the state
7 DMVs.

8 What's on the screen now is a picture out of the
9 State of Vermont's truck licensing database where we were
10 actually up there and doing kind of what we call an
11 implementation review, and basically what we do in these
12 implementation reviews is just see if the state's system is
13 working properly. So what we'll do is take what we know is a
14 clean brand new USDOT number, plug it into their system, with a
15 vehicle that we know is associated with a bad or out of service
16 company, and see if their system reacts properly. You'll
17 notice this one popped up and would tell the licensing clerk
18 that the VIN exists on another USDOT number that's out of
19 service. So that's kind of a flag to the licensing folks to
20 ask for transfer of title on those vehicles, a bill of sale, or
21 some kind of evidence that they're not dealing with one of our
22 so-called chameleon carriers, someone that's just trying to re-
23 incorporate under another name. If you'll go ahead to the
24 next slide.

25 This is a story out of the State of Connecticut. My

1 colleague here, Mr. Bridge, the folks up there are doing a real
2 fine job. There's actually news articles where we've caught
3 some real world examples that were published in the media,
4 identifying some companies that were placed out of service by
5 FMCSA under one name, actually obtained a new USDOT number,
6 attempted to register their vehicles with that new USDOT number
7 but were caught by this link.

8 The next slide is just simply another example also
9 out of Connecticut about the same situation, a company that's
10 placed out of service and tried to start up under a new USDOT
11 number.

12 MR. KOTOWSKI: How many states are participating in
13 the prism program at this time?

14 MR. PRICE: We've got 43 that have entered into grant
15 agreements with us to implement the program. As of today, out
16 of that 43, roughly half of them are up and operational. So
17 we've got a ways to go in terms of getting all 50 up and
18 operational, but the fact that we've got 43 of the 50 already
19 entered into grant agreements, committed to moving down that
20 path, we think it's very promising.

21 MS. PERROT: Thank you. I'm going to move on to now
22 our New Entrant Program recommendation which is H-03-2. This
23 recommendation states that -- well, this recommendation asks
24 the FMCSA to require all new motor carriers seeking operating
25 authority to demonstrate their safety fitness prior to

1 obtaining New Entrant operating authority by, at a minimum, (1)
2 passing an examination demonstrating their knowledge of the
3 Federal Motor Carrier Safety Regulations, (2) submitting a
4 comprehensive plan documenting that the motor carrier has
5 management systems in place to insure compliance with the
6 Federal Motor Carrier Safety Regulations, and (3) passing a
7 Federal Motor Carrier Safety Administration safety audit
8 including vehicle inspections.

9 My first question would be -- well, the first
10 statement is that you talked earlier about how the MCMIS, you
11 do ask for compliance with Federal Motor Carrier Safety
12 Regulations, you do talk to the New Entrant about these FMCSRs,
13 and you also mentioned that you conduct a safety audit for New
14 Entrants. My question would be do you require the New Entrant
15 to pass an examination on the FMCSRs?

16 MR. QUADE: No, the agency does not require a New
17 Entrant Audit to pass an examination. We prefer to rely on
18 performance, on-the-road performance. Having all the knowledge
19 in the world is not any good if you don't apply it.

20 MS. PERROT: Is there some type of follow up at some
21 point to make sure that they are correctly using the FMCSRs,
22 they're correctly following the FMCSRs, that they have
23 incorporated the FMCSRs into their system?

24 MR. QUADE: Well, the New Entrant Audit itself will
25 check to see whether they are complying with our regulations.

1 The follow up again is roadside performance. If they are
2 having performance problems roadside, our -- the roadside
3 inspectors are partners of the states, will identify
4 performance issues and then our Safestat System will target New
5 Entrants for review. It should be noted that in the inspection
6 selection system, that our state partners use to determine
7 which trucks should be inspected, New Entrant carriers if they
8 don't have sufficient performance data, are rated higher --
9 they're rated as an inspect, so that we can begin to get the
10 data. So you're specifically targeting those New Entrant
11 carriers on the road.

12 MS. PERROT: And do you require the New Entrants to
13 submit a comprehensive plan documenting their management
14 systems?

15 MR. QUADE: Again, our safety audit is a review of
16 their plan for what, you know, to insure or I mean we don't
17 require a document which is a plan but without having a plan,
18 it is difficult for a carrier to achieve compliance and
19 therefore pass our safety audit and or the roadside performance
20 which we ultimately judge them on.

21 MS. PERROT: And finally, in the two -- you said it
22 was a two to four hour safety audit that's conducted with New
23 Entrants. Do you also conduct a vehicle inspection during
24 those two to four hours?

25 MR. QUADE: Our policy is to, if there aren't

1 sufficient inspections already on the motor carrier's profile,
2 and to satisfy our sampling requirements, to perform
3 inspections if the vehicles are available.

4 MR. KOTOWSKI: You mentioned the ISS Program. Could
5 you briefly explain what the ISS Program is and what the
6 findings or the ratings are in the ISS Program?

7 MR. PRICE: What the ISS Program basically is, it's a
8 software package that's used by state roadside inspectors that
9 makes use of the Safestat results that are generated each
10 month. As we indicated, the Safestat System more or less
11 categorizes motor carriers depending on how safe or unsafe they
12 are. But basically anybody that's in the worst 25th percentile
13 in one of the four safety evaluation areas, is automatically in
14 the ISS System, recommended for inspection, okay. At the same
15 time, anybody that has insufficient data, in other words,
16 somebody that we need to take a look at because we just don't
17 have enough information to make an assessment, is also
18 recommended for inspection in the system.

19 MS. PERROT: In preparing for this hearing, you
20 submitted an update on several open recommendations. That was
21 on July 28th, and in that update regarding this recommendation,
22 you responded that there is a proposed NPRM that will address
23 some of the items that have been listed in this recommendation,
24 in the three different areas, the minimum areas that we're
25 looking for. I was wondering if you could tell me how will

1 this NPRM further address this recommendation or what types of
2 changes are you looking at in this NPRM that will further
3 address these issues.

4 MR. QUADE: Well, the NPRM is the revision to the
5 revision to the New Entrant Safety Assurance Process I referred
6 to earlier that's under review within the Department, and in
7 our legislative regulatory agenda, you know, we have said we
8 are going to be raising the standard of compliance for passing
9 the safety audit, to insure deficiencies are corrected before
10 the New Entrant is granted registration. Because it's a
11 proposed rule, because of the Administrative Procedures Act, I
12 cannot really comment on the specifics of our proposal.

13 MS. PERROT: Do you have any estimated timeline?

14 MR. QUADE: Again I believe it should be -- it's got
15 to be approved by the Office of Management and Budget and they
16 take 90 days and have the ability to extend that period of
17 time. However, we're looking at late fall, November or perhaps
18 early December.

19 MS. PERROT: Moving onto the last recommendation in
20 this group, H-04-19, and that recommendation states to revise
21 the safety status measurement system to compare passenger
22 carriers to other passenger carriers to insure accurate safety
23 ratings.

24 In October 2004, the FMCSA responded that it would
25 develop a separate compliance review prioritization system for

1 passenger carriers only. And in July 2006, in the response
2 that you submitted, the update for this hearing, you stated --
3 you indicated that instead of devising a separate system, that
4 you would raise the acceptable safety thresholds for passenger
5 carriers within the existing Safestat System.

6 So my question is how will the proposed changes to
7 the Safestat insure accurate safety ratings?

8 MR. PRICE: Well, basically what we've decided to do
9 is we took a look at the idea and we were actually headed down
10 the path of developing a separate passenger carrier
11 prioritization system. We took a look at it and decided that
12 it would be more efficient and basically more operationally
13 feasible and work better with our field staff, if we combined
14 everything into a singular list. We've had similar success
15 with our HM Program in doing that. A few years back, we made a
16 decision that we needed to place more emphasis on hazmat
17 carriers as we kind of delved into the HM security issues. So
18 what we did was basically lower the bar for hazmat carriers so
19 that they would raise up into our compliance review
20 prioritization program.

21 What we're planning to do at this point, is take a
22 similar approach with passenger carriers, in other words, lower
23 the bar so that the unacceptable threshold is lower for them
24 and that they'll raise up into our system and automatically
25 become a compliance review priority for us.

1 As part of making that decision, one of the things
2 that we considered was for the first time ever, Congress
3 actually mandated that we conduct compliance reviews on the
4 highest risk carriers, the Category A and B carriers out of our
5 Safestat System. By making a modification in our existing
6 system, and including passenger carriers there rather than on a
7 separate list, it will basically insure us that some of them
8 will rise up into our Category A and B status and basically
9 take on the importance of a Congressional mandate for our field
10 staff.

11 MS. PERROT: How do the driver and vehicle inspection
12 out-of-service rates for passenger carriers compare with the
13 rates for property motor carriers?

14 MR. PRICE: They're much lower. When it comes to
15 passenger carriers, the driver out-of-service rate is roughly 3
16 to 4 percent, where as with property carriers, it's more in the
17 neighborhood of 7 to 8 percent. When it comes to vehicle
18 inspections, again the passenger carrier industry is
19 continually demonstrating that they're one of the safer modes
20 of transportation. The bus vehicle out-of-service rate is in
21 the neighborhood of 9 to 10 percent each year, whereas the
22 property carrier vehicle out-of-service rate is upwards of
23 around 23, 24 percent, something in that range.

24 MS. PERROT: And what about the accident rates?

25 MR. PRICE: Very similar. The passenger carrier

1 industry has continually demonstrated that when compared to
2 property carriers, their accident rate is definitely lower. I
3 don't have the exact figures in front of me. We can submit
4 those to the docket, but I can say that they are just a little
5 bit over half of what the property carrier accident rate is.

6 MS. PERROT: So once the Safestat System is revised,
7 and once implemented in 2007, will it hold passenger carriers
8 to a different standard?

9 MR. PRICE: It most definitely will. Whereas regular
10 carriers, we're looking at scoring them, if they score in the
11 worst 25th percentile, in one of the four safety evaluation
12 areas of Safestat, what this modification would do,
13 preliminarily what we're looking at is lowering that bar down
14 to the 50 percentile for passenger carriers so that basically
15 any passenger carrier that is performing worse than the median,
16 in other words, will get attention in this new prioritization
17 system.

18 MS. PERROT: Thank you. That's all the questions
19 from the Technical Panel, Madam Chairman.

20 CHAIRWOMAN HIGGINS: Okay. Thank you. We'll begin
21 with the parties. MCI.

22 MR. MURPHY: No questions. Thank you.

23 CHAIRWOMAN HIGGINS: United Motor Coach?

24 MR. PRESLEY: Thank you, Chairman. This question is
25 directed to the FMCSA. Now that we have a prohibition for en

1 route roadside inspections, wouldn't it appear long term that
2 we're actually going to reduce or --

3 CHAIRWOMAN HIGGINS: Can you speak into the
4 microphone? It's very hard to hear your question.

5 MR. PRESLEY: I'm sorry. Now that there's a
6 prohibition on the roadside inspections of motorcoaches while
7 they're en route, long term, won't that skew the numbers if
8 we're using the roadside as -- roadside inspections as a reason
9 ultimately to trigger the reasons for compliance reviews and,
10 in fact, we're actually probably going to reduce the number of
11 roadside inspections? Isn't that eventually going to skew the
12 numbers?

13 MR. QUADE: Well, let me first begin by saying when
14 we talk driver vehicle inspections, and we commonly use the
15 term roadside inspection, we would also include a point of
16 origin or point of destination inspection in that category. So
17 when I used the term roadside inspection, I'm including the en
18 route ones as well as point of origin and point of destination.
19 FMCSA has focused for a number of years on the point of origin
20 and point of destination inspections as being the optimum way
21 for assessing motorcoach safety so that we can address the
22 safety of the passengers should a vehicle need to be placed out
23 of service, they're not being put out on the roadside. And, as
24 Mr. Miller said on the previous panel, we have actually seen a
25 dramatic, and this is, part of it is emphasis that the agency

1 is putting on roadside inspections. We've asked our state
2 partners to increase the number of motorcoach inspections in
3 our national motorcoach plan. We have, you know, getting the
4 states, each and every one of the states to have a motorcoach
5 inspection is part of what we're going to be looking for in the
6 future, and the states, as the agency finds frequently,
7 stepping up to the challenge that we placed in front of them,
8 and we're actually at about 30 percent higher number of
9 inspections this fiscal year than we were last fiscal year, and
10 we still have two months to go.

11 CHAIRWOMAN HIGGINS: American Bus?

12 MR. LITTLER: Thank you. One question for I guess
13 Mr. Quade. You mentioned since the New Entrant Program came
14 online that you have looked at over 200,000 carriers since that
15 time. Is that correct?

16 MR. QUADE: It's 200,000 New Entrants that have come
17 into our program.

18 MR. LITTLER: 200,000 New Entrants.

19 MR. QUADE: Yes.

20 MR. LITTLER: Do you have any idea of how many of
21 those would have been passenger carriers?

22 MR. QUADE: I do not, no.

23 MR. LITTLER: Okay. Would you have any idea of those
24 200,000, as a percentage, what the pass/fail rate would have
25 been?

1 MR. QUADE: I do. The pass rate for New Entrant
2 Safety Audits under our current scheme is about 99.5 percent.
3 However, let me qualify that number. There are seven serious
4 violations that if we discover during a New Entrant Safety
5 Audit, we will turn that New Entrant Safety Audit into a
6 compliance review and do a full assessment of the carrier's
7 operations. So the 99.5 percent figure can be a little
8 misleading.

9 MR. LITTLER: And finally, you indicate that you're
10 looking at and will ultimately be issuing a notice of proposed
11 ruling making, looking at changing the standards for the New
12 Entrant Program review or at least the program, the safety
13 audit. Do you anticipate that with the changes, should they be
14 implemented, that you'll see a difference in that pass/fail
15 rate?

16 MR. QUADE: Yeah, I think in stating that we are
17 going to make the compliance a more important part of the
18 safety audit, the agency is sending a very clear message that
19 the new program will be harder to pass the safety audit.

20 MR. LITTLER: And that's all we have. Thank you.

21 CHAIRWOMAN HIGGINS: Thank you. Sunrise.

22 MR. SCHLOTT: No questions. Thank you.

23 CHAIRWOMAN HIGGINS: Okay. ArvinMeritor.

24 MR. JOHNSTON: No questions. Thank you.

25 CHAIRWOMAN HIGGINS: Bridgestone.

1 MR. QUEISER: No questions. Thank you.

2 CHAIRWOMAN HIGGINS: Texas Department of Public
3 Safety.

4 CAPTAIN PALMER: No questions. Thank you.

5 CHAIRWOMAN HIGGINS: NHTSA.

6 MR. SAUL: No questions. Thank you.

7 CHAIRWOMAN HIGGINS: FMCSA.

8 MS. McMURRAY: We have no questions for this panel.
9 Thank you.

10 CHAIRWOMAN HIGGINS: Then we'll begin with the Board
11 of Inquiry. Ms. Weinstein.

12 MS. WEINSTEIN: Thank you. Can I have the slide for
13 the Safestat categories. Next one. The one that -- that's it.
14 What is the effect of a warning letter under Category
15 C?

16 MR. PRICE: Okay. Basically what the warning letter
17 is, once a carrier's identified as a new Category C company,
18 somebody that we haven't yet conducted a recent compliance
19 review on, what we do is generate an automated letter out to
20 the company that basically tells them, hey, you're having
21 performance problems, you're on our radar screen. It includes
22 an attachment that shows them exactly what data we used to make
23 that assessment. In other words, if they're having problems in
24 the driver area, it will give them a list of the driver
25 inspections that caused us to generate the warning letter, and

1 as far as the effect of it, basically what happens is that once
2 that letter is generated, it starts a six month monitoring
3 period on the company. After six months go by, if they're
4 still at the Category C status, they jump up into the
5 recommended for compliance review section of our priority
6 reports that our field staff gets.

7 So essentially you could say they almost take on the
8 same status as a Category A or B carrier after that six month
9 period if they haven't improved.

10 MS. WEINSTEIN: So there's an ongoing review of them
11 during that six month period or do you come back in six months
12 and review them again?

13 MR. PRICE: Well, what happens is, once the letter is
14 generated to them, it more or less starts a six month clock,
15 where -- I don't want to say they're entirely off our radar
16 screen but we do give them that six month improvement period.
17 Now if during that six month period, we get in some adverse
18 data and they actually jump up into our Category A and B range,
19 then the six month clock stops and they're automatically
20 recommended for a compliance review at that point. In other
21 words, if the letter goes to them in June, we get a bunch of
22 data into our system in September, before the six month
23 period's up, they'll automatically jump up into the recommended
24 for inspection category or compliance review rather.

25 MS. WEINSTEIN: Okay. Thank you. I'd like to switch

1 to the New Entrant review. What activity, if any, takes place
2 between FMCSA and a New Entrant carrier before they actually
3 start operations?

4 MR. QUADE: Well, before the carrier starts
5 operations, they have to register with the agency, and in
6 registering with the agency, they have to, of course, fill out
7 the MCS150 and the 150A, and as part of that process, they have
8 to certify that they are knowledgeable and, you know, will
9 comply with various regulatory schemes. And so the other part
10 that happens is that we will send them an education panel
11 packet on the regulations, that gives them information or
12 access to information about how to comply with our regulations.

13 MS. WEINSTEIN: And then what happens from the time
14 they start operations? Is that when the 18 month clock starts
15 ticking for New Entrant review?

16 MR. QUADE: That's correct. The 18 month clock
17 starts ticking when they're issued the DOT number. I should
18 note, and I neglected to say it earlier, that for passenger
19 carriers, we will, by policy, go visit them and do the New
20 Entrant Audit within nine months.

21 MS. WEINSTEIN: Nine months?

22 MR. QUADE: Yes.

23 MS. WEINSTEIN: Is it theoretically possible that a
24 carrier could not have a safety management system in place
25 until the ninth month when you show up?

1 MR. QUADE: Yes, that's theoretically possible.

2 MS. WEINSTEIN: Thank you. I have no further
3 questions.

4 CHAIRWOMAN HIGGINS: Dr. Ellingstad?

5 DR. ELLINGSTAD: Thank you. I'd just like to ask a
6 couple of questions relative, just so we understand the scale
7 of the whole operation. You had indicated to Mr. Littler that
8 there were 200,000 New Entrants, and what's the period of time?

9 MR. QUADE: Since the program began in 2003.

10 DR. ELLINGSTAD: And how many, how many New Entrant
11 Audits have been conducted against that 200,000?

12 MR. QUADE: I don't have the exact number of audits
13 on hand. Let me -- I should point out that we have found out
14 that a certain percentage, and it's a rather sizeable
15 percentage of the 207,000 do not require a DOT number, and
16 therefore we don't actually do an audit on them. These are
17 owner/operators who become registrants. They need a DOT number
18 to be a registrant, and yet they are leasing onto a motor
19 carrier. So they're operating under the motor carrier's
20 authority and we would not do a New Entrant Safety Audit on, or
21 intrastate carriers that have mistakenly applied for the USDOT
22 number without realizing that it's not required of them. You
23 know, what I can say about the number of audits, we did 26,000
24 last year.

25 DR. ELLINGSTAD: 26,000.

1 MR. QUADE: Our state partners did 26,000 New Entrant
2 Safety Audits in fiscal year 2005. The federal staff did
3 another 8,000 I believe. And so, you know, that was around
4 35,000 in fiscal year 2005.

5 DR. ELLINGSTAD: What's your annual rate of new
6 MCS150 forms, applications for this?

7 MR. QUADE: Well, as I said, you know, we're finding
8 that our annual rate of the forms is somewhere around 50,000,
9 but the actual number of New Entrants is around 35,000.

10 DR. ELLINGSTAD: Are you ever going to catch up with
11 audits?

12 MR. QUADE: Well, to date, we are not significantly
13 behind in audits. There are right now about 400 carriers that
14 are beyond our 18 month window, and that -- that number has
15 been improving steadily in the last year. Last year at this
16 point in time, we were able to do a contract to get a
17 contractor on board, a third party contractor, to perform the
18 safety audits for the agency. Our staff and the states were
19 not able to take the load. So we identified the need and
20 obtained the contractor. The contractor since we've received
21 their service, we have been steadily moving towards fewer and
22 fewer carriers being past the 18 month window.

23 DR. ELLINGSTAD: Okay. And you're satisfied that the
24 contractor is providing the same level of auditing service?

25 MR. QUADE: Yes, we are. We are absolutely

1 satisfied. They go through our training academy. They are
2 trained under the same standards, receive the same tests, and
3 are monitored to insure the quality assurance of their product.

4 DR. ELLINGSTAD: And again, just so I understand the
5 process, one of you had indicated that this New Entrant Audit
6 was a matter of a few hour visit. Is that --

7 MR. QUADE: On the average, it takes about four
8 hours.

9 DR. ELLINGSTAD: Okay. And again one other number,
10 just so that I've got it clear in my head, what's the total
11 number of carriers that you have registered in the database?

12 MR. QUADE: It's just over 700,000.

13 DR. ELLINGSTAD: Thank you.

14 CHAIRWOMAN HIGGINS: Mr. Magladry.

15 MR. MAGLADRY: Just a quick question on Category C
16 and your warning letter. And how effective is that?

17 MR. PRICE: Well, the warning letter itself
18 originated as part of our PRISM Pilot going back probably to
19 the mid 1990s. As part of the evaluation of the PRISM Project,
20 there was an evaluation of the warning letter specifically and
21 what we found was, and I don't recall the exact percentages,
22 but we can supply that for the record, but I want to say that
23 it was roughly 30 percent of the carriers that received the
24 warning letter, actually improved their compliance status,
25 before we went out and had to knock on their door to do a

1 compliance review.

2 MR. MAGLADRY: How do you measure that? I mean I can
3 see somebody getting into a C Category, and I can see them
4 moving from C to a lower category or an upper category based on
5 a compliance review, but short of a compliance review --

6 MR. PRICE: Well, that's basically how we were doing
7 the measurement, was taking a look at what was happening with
8 their roadside performance. In other words, if they were a
9 Category C, based upon poor vehicle inspections, they received
10 a letter, they took it to heart, they said, well, I've got this
11 problem, some inspections came into the system that didn't have
12 any out-of-service violations, and it was evident that they had
13 cleaned up their act, their Safestat category would drop and
14 then that would be indicative that the letter had been
15 successful.

16 MR. MAGLADRY: Thank you. That's all I have.

17 CHAIRWOMAN HIGGINS: Member Hersman.

18 MS. HERSMAN: The industry responded to some
19 recommendations that we made about pre-trip safety briefings
20 for passengers, and I know they have some materials that they
21 put together, video and not video types of things. Are those
22 things that would be necessary for you all to review and
23 approve or should the industry be using those if they develop
24 them?

25 MR. QUADE: We always encourage the industry to

1 develop best practices and implement them. There's no
2 requirement for our agency to approve them.

3 MS. HERSMAN: Would you have an interest in reviewing
4 them?

5 MR. QUADE: We certainly do have an interest in
6 knowing what's going on in the industry, and it allows us to
7 monitor what's going on and perhaps take successful strategies
8 and use them in outreach efforts or even future regulatory
9 efforts.

10 MS. HERSMAN: I'd like to go back to the numbers
11 issue. You've got 700,000 active carriers, about 20,000 of
12 those are passenger motorcoach operators. Is that accurate?

13 MR. QUADE: No. We have about 3,600 active
14 motorcoach operators.

15 MS. HERSMAN: Okay. And you do about 10,000 CRs
16 annually?

17 MR. QUADE: Uh-huh.

18 MS. HERSMAN: And of those, about 3 percent or 350 or
19 so a year are done on passenger carriers?

20 MR. QUADE: Yeah, actually in recent years, the
21 proportion has been higher towards passenger carriers, and you
22 can never find the number when you want it, but in 2004 and --
23 in the 2004, 2005, 2006, the ratio of passenger carriers has
24 been increasing, and it was actually 10 percent during either
25 last year or the year before.

1 MS. HERSMAN: 10 percent of the total CRs or 10
2 percent of the population?

3 MR. QUADE: 10 percent of the population.

4 MS. HERSMAN: Right. So that would be about 350 if
5 there were 3,500 carriers.

6 MR. QUADE: Uh-huh.

7 MS. HERSMAN: Okay. So given that you've got those
8 constraints and you're new approach, rather than comparing
9 buses to buses, as we've made recommendations on, you're
10 looking at bumping them up so that they would be subject to
11 more frequent CRs. Is that accurate?

12 MR. PRICE: That is accurate. I would add though
13 that bumping them up within the Safestat System is just one
14 element of it. Also I believe Mr. Havelaar this morning
15 alluded to the fact that the states, the division offices have
16 safety plans where they'll conduct compliance reviews on
17 passenger carriers that don't necessarily have a Safestat score
18 at all, just because they're unrated and passenger carriers are
19 a priority for our agency.

20 MS. HERSMAN: And the way I understood you to
21 describe the way you're going to bump them up, is you're going
22 to kind of put the hurdle at 50 percent rather than at 75
23 percent as you do kind of across the board now. But we already
24 know that the buses in general are safer and have better out-
25 of-service rates than, than the general population. You used a

1 statistic of 9 percent out of service compared to 24 percent
2 out of service. So I'm not quite sure how the bumping up to
3 the 50 percent, because they're already better. And so you're
4 still -- you're higher net isn't capturing the universe of
5 carriers that, that is ideal. I mean we want to get the worst
6 of the bus operators, not using the whole -- compared to the
7 whole industry, if there's only 3600 of them, and there's
8 700,000 total, you know, registrants, you're still not using
9 the right metric.

10 MR. PRICE: Right, and I understand what you're
11 saying, and you're exactly right, which is precisely why
12 Safestat isn't the only mechanism we use to establish
13 compliance review priorities. As you indicated, even if we
14 lowered the bar, if the passenger carrier industry by and large
15 performs better than the property carrier industry, there's not
16 going to be as many rise up. Okay. Now we have taken a look
17 at some of the preliminary numbers, you know, just internally
18 by lowering the bar. We think we're going to increase our
19 Category A and B carriers from roughly 14 passenger carriers
20 that we would have now to -- and I've got the numbers here.
21 I'll have to pull them up. There are Category A and B carriers
22 under that scheme would raise from 14 up to 270 passenger
23 carriers. And as we mentioned, we did -- last year we did 350,
24 400, somewhere in that range, passenger carriers.

25 So the bottom line here is the Safestat mechanism

1 would be one means of prioritizing passenger carriers. At the
2 same time, you know, we recognize the inherent risk there and
3 recognize that even if they're not in our system, because we
4 don't have inspection data or something on them, of that
5 nature, we also need to pay additional attention to passenger
6 carriers, which is why our division offices have these things
7 like safety plans, where they can do additional compliance
8 reviews outside the ones that are mandated by the Safestat
9 Program.

10 MR. QUADE: And if I might use this time to put forth
11 a figure, I mean one of the previous panels, the gentleman from
12 the Bus Bank had said he thought about 10 percent of the
13 carriers -- passenger carriers they dealt with had safety
14 ratings. Indeed, the actual percentage in our census is 45
15 percent of passenger carriers have ratings. So it's much
16 higher than the 10 percent.

17 MS. HERSMAN: Okay. I don't, I don't want to belabor
18 this, but it sounds like your net is now going to pick up 270
19 carriers but you're doing 350 to 400 now, and so that's still
20 inside what you're already, what you're already picking up
21 right now. So it's not as if it's going to result in an
22 increased number of audits.

23 MR. QUADE: I think the point is that it's going to
24 increase -- result in increased numbers of targeted audits. In
25 fact, our fiscal year 2007 budget that we submitted to the

1 President, has a goal of 525 audits for fiscal year 2007. And
2 so, you know, the agency is going to bring the number up. What
3 we're doing by lowering the threshold in Safestat is raising
4 the number of targeted audit against people who have bad
5 performance data versus just simply going and visiting somebody
6 because they don't have a safety rating.

7 MS. HERSMAN: Okay. Now if you increase the number
8 of motor carrier audits, are you robbing Peter to pay Paul by
9 reducing the number of audits for trucking companies that may
10 in fact have worst safety records than some of these bus
11 companies?

12 MR. PRICE: Well, I think, I think in anything we do,
13 part of what goes into the equation is a balance of the
14 resources that we have with the risk that's out there. So
15 we're not necessarily robbing Peter to pay Paul. What we're
16 trying to do is -- and we're continually trying to do this, but
17 we're trying to do a better job of using the resources we have
18 available to us to make the biggest safety impact out there.

19 MS. HERSMAN: Mr. Bridge, I was wondering if you had
20 a position on this issue of the third party auditors, and I'm
21 particularly interested in the issue of the New Entrant audits
22 and whether or not there are so many of those being done and so
23 many of those are being done by the states. Does it make sense
24 to focus law enforcement on the compliance reviews and focus
25 the safety audits as a function of a third party performance?

1 MR. BRIDGE: The issue at hand, the third party
2 audits, as we understand it from the Alliance point of view, is
3 those third party audits are done in those states where they're
4 having trouble either with state law or issues with the state
5 partners being able to conduct the safety audits. So that's
6 our -- our knowledge of that is that that's where they're using
7 the third party contractors. So that they're able to
8 effectively go after those state New Entrants without waiting
9 for the state to get up to speed to be able to conduct them
10 with their own personnel. That's the way we understand that.

11 So obviously on that side of it, that's a good thing
12 because those New Entrants are getting done, and they're not
13 going to fall behind on that level of them.

14 As opposed to the law enforcement officers doing a
15 compliance or the safety audits, a number of the states who do
16 the safety audits do them with law enforcement officers as we
17 do in our state. The people that do the safety audits are law
18 enforcement officers. They're sworn members, and they have
19 powers of arrest and all that. A number of other states who
20 operate through the DOT or other areas there, have actual
21 civilians that would come in, that work for the state and do
22 the audits. So they're not necessarily enforcement personnel
23 that are doing those. They're audit personnel that
24 specifically just target safety audits and they don't have to
25 do all that other law enforcement stuff that we have to do to

1 keep certified.

2 MS. HERSMAN: Okay. We have a significant history at
3 the Board with some carriers that have been rated conditional,
4 and I know, I know from the information that you've provided
5 that you have about 100 carriers from your website that says
6 they're rated conditional. I was wondering why we have a
7 conditional category if it is incumbent upon the regulators,
8 law enforcement, to return and visit a carrier once it gets a
9 conditional rating. I know you all are looking at your CSA
10 2010 initiative to kind of reinvent this, but it is incredibly
11 frustrating to see these carriers flagged as conditional and
12 know that there are a number of safety things going on here and
13 then, you know, the day after the accident, they get an
14 unsatisfactory. They weren't unsatisfactory at that point.
15 They had been unsatisfactory for along time, and many of them
16 have been left in conditional status, and I did a search, and
17 there's a number of carriers in the motorcoach website now that
18 have conditional and you've even got them yellow highlighted as
19 conditional, like these are the worst of the conditions. Why
20 do we continue to have a conditional rating, and is that
21 something that, Mr. Bridge, you have an opinion or FMCSA, that
22 you intend to address?

23 MR. QUADE: From the Federal Motor Carrier Safety
24 Administration's point of view, you know, the conditional --
25 the rating with the three tiers has been in place for a number

1 of years. It is something that we are examining with our CSA
2 2010 initiative, as to whether the current rating system with
3 three tiers is the best way to go. You know, having said that,
4 I'm forced to focus on the fact that we have a system in place
5 to identify carriers that are having bad on road performance,
6 and while a carrier may carry a conditional safety rating, as a
7 result of one of our compliance reviews, is equally likely or
8 even probably more likely that they improve the things that
9 were supposed to be done as a result of the compliance review,
10 and haven't been targeted for a review as part of the A and B
11 carrier because they've improved their performance to
12 satisfactory as opposed to the other way around.

13 So, you know, my response to that is that we have
14 systems to identify the poor performers that are operating on
15 our high ones.

16 MR. BRIDGE: And in the Alliance, our program
17 initiatives committee is obviously actively involved in the CSA
18 2010 and those initiatives that they're looking at and
19 providing input into FMCSA and more than willing to sit with it
20 at all times and talk about those initiatives and whether there
21 should be satisfactory and conditional or to review those areas
22 where they are or they aren't. I guess that gets into a lot of
23 the impedance of commerce and where do we draw the line, and at
24 what point do we say you no longer can run especially with some
25 of the new safety provisions that are coming in.

1 And I'll switch my hats quickly to Connecticut, where
2 we now have a state law that allows us to revoke the
3 registrations and the right to anybody operating who has an
4 unsatisfactory safety rating regardless of who they are,
5 passenger carrier, property carrier. So if we go a system
6 where it's either pass or fail, at that point, it's either
7 satisfactory or unsatisfactory, that's obviously going to have
8 an impact with the way that business is conducted in all the
9 states, but specifically in our state. So again obviously
10 we're there, we're at the table, and we want to discuss it, and
11 there has to be a lot of discussion to what point do we draw
12 the line in the sand.

13 MS. HERSMAN: Well, I think the resource issue begs
14 for a line in the sand to be drawn. You can't, you can't
15 perform the inspections that you need to perform. You can't
16 look at every carrier. You can't follow up on every out of
17 service that takes place, but when you do, and you find
18 problems, this conditional rating just -- the earlier panel
19 talked about a policy issue about intra and interstate
20 violations, and that the statutory language in SAFETEA-LU is
21 telling you all to go back and count this intrastates again.

22 MR. QUADE: Correct.

23 MS. HERSMAN: And the previous panel said that you
24 all were contemplating whether or not to use by policy or by
25 regulation, and I note the '91 effort to count it was done by

1 policy by FHWA. The 2002 FMCSA effort to not count them was
2 done by policy. Why, if you have a mandate to do it, and
3 you've used the policy option in the past, why don't you go
4 directly to that? What is the decision about whether or not to
5 go to regulation?

6 MR. QUADE: Well, one of the things that also
7 happened in the intervening period though, in 1997, the agency
8 was sued for not seeking notice and comment on our rating
9 methodology and we had to go a period of six months while we
10 promulgated this regulation without rating carriers at all.
11 And so that is what the agency is looking at with respect to
12 whether a policy would be something that would be definable or
13 whether we need to go with the rulemaking option.

14 MR. PRICE: I would add to what Mr. Quade said, that
15 when it comes to our Safestat System, what we're using to
16 target our resources, what we're putting out there to the
17 public on websites, what people can look at to evaluate motor
18 carrier performance, we always have and have continued to use
19 intrastate data in that system.

20 MS. HERSMAN: Thank you.

21 CHAIRWOMAN HIGGINS: Ms. McMurtry.

22 MS. McMURTRY: Yes, ma'am. I have three questions.
23 Mr. Price, you said that you would provide the passenger
24 carrier accident rate for the record. And, Mr. Quade, could
25 you also provide the -- for the record the number of passenger

1 carriers in the New Entrant Program. You couldn't recall at
2 the moment but could you --

3 MR. QUADE: I'd be happy to.

4 MS. McMURTRY: And the -- and also breakdown in your
5 for FY 2005, the number of New Entrants that had been done or
6 the number of audits that have been done by both you and -- by
7 both the states and the feds.

8 MR. QUADE: Certainly.

9 MS. McMURTRY: And the number of passenger carriers
10 including those?

11 MR. QUADE: Sure. And, ma'am, for the record, I do
12 happen to have the accident rates.

13 MS. McMURTRY: oh, okay.

14 MR. QUADE: The motorcoach accident rate per 100
15 power units is 4.6. The property carriers are 8.8.

16 MS. McMURTRY: Okay.

17 MR. QUADE: So Bryan was accurate in saying the
18 motorcoach is about half.

19 MS. McMURTRY: Okay. Thank you very much. This is
20 probably a question for Don Bridge, but the FMCSA folks could
21 chime in, too. In -- with the new SAFETEA-LU prohibition of
22 not being able to stop unless you see an egregious action, a
23 passenger carrier for an en route inspection, how do you
24 enforce or how to you catch and therefore then enforce hours of
25 service violations at destinations and origins?

1 MR. BRIDGE: Well, we specifically in Connecticut, we
2 use destination inspections as our large portion of the
3 "roadside inspections" because those are still roadside.
4 They're just done when they arrive to where they're going.
5 That would be our two casinos in the state, where you still --
6 at that point you grab the driver's logbook, let them discharge
7 all their passengers so they can go do what they have to do,
8 and then you're able to take effect, you look at the equipment
9 of the vehicle, the driver's documents, the hours of service,
10 and if you reach something where's there's an out-of-service
11 issue, you have a whole contact list of other carriers that
12 either will be able to supply another vehicle and driver to
13 take those passengers away or in talking with the driver and
14 the company, how long this charter is for or the trip is for.
15 If it's an out-of-service for 8 hours, for that driver, and the
16 trip isn't meant to be leaving for another 12 hours, then the
17 driver can obviously be brought back to service after being
18 placed out for 8 hours. So we -- on the destination
19 inspection, you can do your hours of service. Origin
20 inspections are going to be a little more difficult there.
21 However, you can still look at their past documents for their
22 previous 8 days for a 60 or 70 hour rule violations. You're
23 obviously not going to have any current 10 hour rule violations
24 for driving and things like that, for those issues, on the
25 origin inspections.

1 The en route inspections, not being able to just
2 randomly do them, really kind of bores you down to the drivers
3 that are behaving badly, and if we go back and there's studies
4 and everything that tells us, those seem to be the drivers that
5 are causing the problems anyway. So maybe those are the
6 drivers we really need to be looking at. We can still stop
7 them roadside if they're speeding, they're following too close,
8 they don't signal, they're in improper lanes, doing any traffic
9 violation, we still have the ability to stop and inspect those
10 and do the hours of service and the basic walk around. We
11 won't be able to get under the bus obviously roadside but, you
12 know, sometimes that's not always as bad.

13 We also in the State of Connecticut, we also make
14 sure that all of our carriers, passenger carrier vehicles are
15 inspected at least once a year. Most of them are twice a year
16 if they're intrastate carriers.

17 MS. McMURTRY: From the FMCSA's perspective, have you
18 found this to be a problem or are you seeing the consistent
19 experience that Don just described.

20 MR. QUADE: Consistent experience. I have nothing to
21 add.

22 MS. McMURTRY: Okay. One last question. You
23 mentioned in a New Entrant Audit that you would not -- well,
24 that if they had had an out of service or vehicle out-of-
25 service rate, you would -- or you had some data to judge them

1 on, you would not conduct a vehicle inspection on site during
2 that examination but are these -- you would only look at
3 vehicles that were there. But are these New Entrant Audits
4 scheduled?

5 MR. QUADE: Yes, they are.

6 MS. McMURTRY: Does the carrier know you're coming?

7 MR. QUADE: Yes, they do.

8 MS. McMURTRY: So theoretically, they could send
9 their bad vehicles away?

10 MR. QUADE: Either that or they could also
11 theoretically inspect them before we got there and made sure
12 they were in good condition so they had good information, which
13 is one of the reasons why the agency prefers to rely on
14 roadside data as opposed to inspections. Our compliance
15 reviews are generally scheduled also. So we're not always
16 certain that the vehicles we conduct during one of on site
17 audits are necessarily indicative of the fleet as a whole.

18 MS. McMURTRY: Okay. Thank you. That's all.

19 CHAIRWOMAN HIGGINS: Thank you. I want to bring this
20 back to the accident that we're investigating, the Wilmer bus
21 fire. I just checked, because I thought I remembered that the
22 history of this company, this operator, was that they began
23 business in the 1980s, and I think it's accurate to say that
24 their first FMCSA review was in 2004. That's 24 years later.
25 Can you help me understand in this system that we're talking

1 about here, of New Entrants and Safestat, how a company could
2 go for 24 years without any review by the Federal Motor Carrier
3 Safety Administration? And, secondly, if that was their first
4 review, was that a New Entrant review? Was it a full
5 compliance review? How long did that review take?

6 MR. QUADE: Well, let me start by saying that today,
7 in the systems we have set up, because of the New Entrant
8 Safety Assurance Process, that would not happen.

9 The 2004 review as a full compliance review. It was
10 not a New Entrant Safety Audit because the carrier joined our
11 census before the effective date of the New Entrant Safety
12 Assurance Process rule. That rule was effective for every
13 motor carrier that joined our census after January 1 of 2003.
14 So this carrier got a New Entrant Safety Audit.

15 With respect to how they were able to operate for a
16 period of time without receiving a review, they did not have
17 the safety performance data which would, you know, prior to
18 2004 which would have indicated that they were a problem, and,
19 and, you know, we were dedicating our resources towards
20 carriers that were showing, demonstrating on the roadside that
21 they've had problems.

22 CHAIRWOMAN HIGGINS: Okay. Let me just -- because
23 I'm -- I want to understand how this system works. We heard
24 earlier that the State of Texas had done a review in 2002, that
25 if rated under your system would have found them to be

1 unsatisfactory. Is that the first State of Texas review? I
2 guess I can look at the State of Texas. I mean I don't -- it
3 seems to me there's a big disconnect here between what's going
4 on in the real world, and I find it hard to believe that this
5 is the only motor carrier in the State of Texas or in the
6 country that falls into -- that has a 25 year gap between when
7 they start business and when they're inspected, and that we've
8 got state data and roadside inspection data that, you know,
9 didn't trigger some things. So I'm just -- I don't know that
10 we can answer all this today, but we've got, you know, 23
11 people died on this bus. There were maintenance problems with
12 this bus. There were issues with, we heard earlier, the driver
13 had a 50 percent out-of-service rating, and somehow they didn't
14 get caught in the FMCSA's system, and it's now fixed. I mean
15 how many other bus operators are out there that have been
16 looked at in 25 years?

17 MR. QUADE: I don't know the answer to that question.

18 CHAIRWOMAN HIGGINS: Well, can we look and find out
19 please?

20 MR. QUADE: Certainly.

21 CHAIRWOMAN HIGGINS: I also want to understand how
22 this safety rating system that you're talking about, takes
23 account of the inspections that were done on this bus. Again,
24 you know, we're -- our job is to use this accident to
25 understand what is working and what isn't working in this

1 system. And, you know, we've talked about three inspections
2 earlier, the state inspection, the federal inspection, in 2004,
3 and the compliance review that was done post-accident. How
4 would that get captured in this safety data system? And the
5 question is, what information is really available to, to bus
6 brokers or to the traveling public? You talk about drilling
7 down into that system. How does that work?

8 MR. PRICE: Well, I'll take the first part of that
9 question. When it comes to the 2004 compliance review that was
10 done by FMCSA on Global, that information would have gone into
11 our system. Granted, it was a satisfactory safety rating.
12 There were -- to the best of my knowledge, there were still
13 violations documented on that compliance review. All those
14 violations go into our system, also go into our Safestat
15 System. If anybody in the public would have pulled up Global
16 Limo before this accident occurred, they could have pulled up
17 the fact that the company did have a high out-of-service
18 vehicle rate. They could have pulled up the fact that there
19 were things documented on that 2004 compliance review, could
20 have drilled down into the data and saw what the results of
21 that compliance review were, that the specific violations were,
22 things of that nature.

23 I would also add that you talk about catching the
24 carrier in our systems, that the fact that Global Limo did have
25 a high vehicle out-of-service rate from the roadside

1 inspections, did put them on our radar screen. They weren't
2 completely flying under the radar screen. We talked a little
3 bit about the inspection selection system, roadside inspection
4 software earlier. Global Limo, by virtue of the fact that they
5 had a high, I guess I should say it was driver out-of-service
6 rate from roadside inspections, was categorized as a Category E
7 company, and in the systems that roadside inspectors look at,
8 as a red light, somebody that's recommended for inspection,
9 somebody that's needs to -- we need to have a closer look at,
10 so bottom line is we do have systems in place and when we do
11 get the data, it's coming into our system, and when companies
12 are having problems, we are flagging them for attention, but
13 again, we're doing the best job we can at balancing the
14 resources we have with available data to make the biggest
15 safety impact out there.

16 CHAIRWOMAN HIGGINS: I appreciate that, but I think
17 we're all here to try and understand what worked and what
18 didn't, and what issues come out of this accident. And to say
19 that we have a data system that flags all these problems, I'm
20 just trying to understand, this accident happened less than a
21 year ago, what has changed in terms of how this kind of
22 operation would be caught today when it wasn't caught a year
23 ago?

24 MR. PRICE: Well, specifically what's changed, we're
25 taking an initiative to increase passenger carrier emphasis in

1 our prioritization systems, which we indicated, and we're also,
2 you know, outside the Safestat System and outside the carriers
3 that are flagged as priority because of their data, also making
4 a concerted effort through our state division office safety
5 plans to emphasize passenger carriers even more frequently. As
6 Mr. Quade indicated, we did roughly 450 passenger carrier
7 compliance reviews last year.

8 CHAIRWOMAN HIGGINS: I believe you said that there
9 are 3600. Is that motorcoach operators?

10 MR. PRICE: Yes, ma'am.

11 CHAIRWOMAN HIGGINS: How many buses does that
12 represent or motorcoaches?

13 MR. PRICE: I want to say about 30,000 -- I mean
14 about -- let me find the number.

15 CHAIRWOMAN HIGGINS: And I assume these are -- we're
16 talking about interstate operators. Is that correct?

17 MR. PRICE: Yes, ma'am.

18 CHAIRWOMAN HIGGINS: While you're looking for that
19 number, let me --

20 MR. QUADE: 32,000.

21 CHAIRWOMAN HIGGINS: 32,000 buses. Do we have any
22 idea how many buses are looked at each year?

23 MR. QUADE: In terms of number of inspections
24 roadside?

25 CHAIRWOMAN HIGGINS: Uh-huh.

1 MR. PRICE: Yeah, we do have that number.

2 MR. QUADE: So far to date, this fiscal year, it's
3 over 17,000.

4 CHAIRWOMAN HIGGINS: 17,000 buses.

5 Mr. price: Inspections of motorcoaches. And that's
6 up from 12,000 last year and a little over 10,000 the year
7 before.

8 CHAIRWOMAN HIGGINS: Okay. So that trend is in the
9 right direction. Okay. Now we heard a lot yesterday about,
10 and we're here again focusing on the issue of bus fires.
11 You're talking about your Safestat System which is an accident
12 based system as I understand it.

13 MR. QUADE: That's correct.

14 CHAIRWOMAN HIGGINS: Does your system capture bus
15 fires?

16 MR. QUADE: The incident of a bus fire, on the side
17 of the road, if it occurs on the highway, and meets our
18 definition of an accident, and should -- and is sometimes
19 reported to our system. There are over 200 bus fire incidents
20 in our system that are working. One of the things that the --
21 this crash has alerted the agency to is that we need to work
22 closer with our state partners to make sure that they
23 understand that that bus fire on the side of the road, if the
24 vehicle is towed, there's injuries or a fatality, meets our
25 definition of an accident and needs to be reported to our

1 system, because we don't believe we're capturing as much as we
2 should be, but it certainly is an area we're going to work on.

3 CHAIRWOMAN HIGGINS: Well, let's be clear about what
4 we're capturing and what we're not capturing. We were told
5 yesterday and admittedly this data is obviously incomplete.
6 But the estimate is that there are 6 bus fires a week or -- and
7 another number that was used was 2600 a year. And you I think
8 just said you have 200 incidents that are now in your system?

9 MR. QUADE: Yes, ma'am.

10 CHAIRWOMAN HIGGINS: Okay. What do we need to do to
11 make sure that these incidents and remember, we did not --
12 yesterday we heard pretty clearly but for this accident, there
13 have not been injuries or fatalities. We found one accident
14 where there were some injuries. So the criteria you just used,
15 I'm wondering whether we would still capture this information?

16 MR. QUADE: Well, generally on the -- many of them
17 result in the vehicle being towed away, and so we would capture
18 it, and, and, you know, what we need to do is get out and
19 educate our state and local law enforcement about the fact that
20 this meets the definition in the criteria of a crash.

21 CHAIRWOMAN HIGGINS: Is there a mandatory reporting
22 requirement for states now in terms of accidents?

23 MR. QUADE: It's part of the commercial vehicle
24 safety plan, each state must certify to the agency that they,
25 in order to receive MCSAP funding, that they are collecting

1 commercial vehicle accidents, yes, ma'am.

2 CHAIRWOMAN HIGGINS: Is that reporting requirement
3 broad enough as it's currently written to include bus fires?

4 MR. QUADE: Yes, ma'am. Bus fires that occur on the
5 highway, resulting in the vehicle being towed away, somebody
6 being injured or there being a fatality.

7 CHAIRWOMAN HIGGINS: As opposed to a bus fire that
8 occurs in a parking lot?

9 MR. QUADE: Right.

10 CHAIRWOMAN HIGGINS: Even though it may have just
11 left the highway?

12 MR. QUADE: Yes, ma'am.

13 CHAIRWOMAN HIGGINS: That strikes me as --

14 MR. QUADE: I did say that we're not looking at this
15 as being a comprehensive solution to the bus data fire problem,
16 but it is certainly a step that the agency can and is taking
17 toward improving the data that we get.

18 CHAIRWOMAN HIGGINS: Is there some reason not to try
19 and capture information on -- we had an example yesterday of a
20 bus in West Virginia that was transporting senior citizens to
21 -- in Charlestown, the bus caught fire in the parking lot,
22 people were still on the bus, some people were injured getting
23 off the bus, but that apparently wouldn't be caught in the
24 system that you're describing?

25 MR. QUADE: Well, legally, the agency has

1 jurisdiction of actions that occur on the public highway.

2 CHAIRWOMAN HIGGINS: Okay. I would ask that all of
3 you go back and look at that criteria, because I don't know how
4 we begin to get our arms around this problem if we can't get
5 accurate reporting.

6 To me the reason, not only are these issues -- we
7 know there's an increasing number of incidents, but what this
8 accident points out is, as we heard yesterday from many of our
9 experts, is the issue of maintenance. And that maintenance
10 issues which I think are something -- I gather these are looked
11 at in roadside inspections, but it may only come to light in
12 terms of when you actually have a fire like this, particularly
13 if we're not doing, you know, many thorough compliance reviews.
14 So all of these things are related. It seems to me the only
15 way we can really get, get targeted on this, and really drill
16 down to use your words, into what's going on here, is to find
17 whether it's roadside inspections, the system we have in terms
18 of reporting compliance reviews, but also to be a little bit
19 more creative about how we begin to look at this issue more
20 intensely because we can't, in my mind, solve the problem until
21 we can begin to figure out what these issues are.

22 We had lots of examples of whether it's engines,
23 electrical, brakes, tire wells, we don't know, and the
24 problem -- the results seem to be all about the same, that
25 these fires are pretty, pretty virulent once they get started.

1 But the question is finding out what is going on out there, and
2 it seems to me we've got to start with getting better data, and
3 we're not here to make recommendations. That's going to come
4 in the next several months, but I would hope that working with
5 you all as a party to this investigation, we could begin to get
6 some consensus about what needs to be done here.

7 Okay. I have no more questions for this panel. Does
8 anybody else?

9 (No response.)

10 CHAIRWOMAN HIGGINS: Thank you. We'll take a 10
11 minute break, and begin the next panel. Thank you.

12 (Off the record.)

13 (On the record.)

14 MS. McMURTRY: Mr. Minor, would you please raise your
15 right hand.

16 (Whereupon,

17 LARRY MINOR

18 was called as a witness, and having been first duly sworn, was
19 examined and testified as follows:)

20 MS. McMURTRY: Thank you. Would you state for the
21 record your full name, your title, and the office within FMCSA
22 where you work and your business address?

23 MR. MINOR: My name is Larry Wayne Minor. I am the
24 Director of Bus and Truck Standards and Operations for the
25 Federal Motor Carrier Safety Administration. The office

1 address is 400 Seventh Street, Southwest, Washington, D.C.

2 MS. McMURTRY: And how long have you been in your
3 current position?

4 MR. MINOR: I've been in my current position since
5 February of 2005. However, I've been with the Office of
6 Standards since 1989.

7 MS. McMURTRY: And what are your duties and
8 responsibilities?

9 MR. MINOR: The duties and responsibilities for my
10 office include driver and carrier operation standards, vehicle
11 safety standards including inspection, repair and maintenance
12 guidelines and physical qualification standards for drivers.

13 MS. McMURTRY: Okay. Thank you. Member Higgins, the
14 witnesses on Panel 8 have been sworn and qualified, and we'll
15 turn the questions over to Mr. Van Etten and Ms. Perrot.

16 CHAIRWOMAN HIGGINS: Thank you. Please proceed.

17 MR. VAN ETTEN: Thank you. This final panel is going
18 to discuss some of the open recommendations from the National
19 Transportation Safety Board to the Federal Motor Carrier Safety
20 Administration, in the broad categories of vehicle inspection,
21 brake inspection certification and driver training. I want to
22 say up front that the Board has received a response to most of
23 these open recommendations on July 28th, and we thanked them
24 for sending us those responses. So the questions that I'm
25 going to talk about today are mostly clarification questions

1 regarding some of the things that were said in those responses.

2 Again, thank you for those responses.

3 The first recommendation I would like to address is
4 H-02-16, which the subject matter essentially deals with
5 conducting vehicle inspection during all compliance reviews.
6 Right now inspections are only done if a certain number of
7 roadside inspections have not been made, and, and in a NTSB
8 accident investigation, in the Mountainburg, Arkansas
9 investigation and the Victor, New York investigation, we found
10 by going back to the carrier and inspecting the entire fleet at
11 the carrier's terminal, that they had a much higher out-of-
12 service rate than the -- than was shown on the FMCSA database.
13 And the 2000 -- or excuse me -- the July 28th response by the
14 FMCSA, they said they're focusing more on vehicle inspections
15 to the exclusion of other safety factors such as driver factors
16 would not be prudent.

17 So just a couple of questions. I know this has been
18 asked before, but I would like to ask again, how much time does
19 it take to do a typical compliance review?

20 MR. MILLER: A typical compliance review on a small
21 carrier would take anywhere from two to four days. Larger,
22 again, as the carrier's size increases, the length of time it
23 takes to do a full compliance audit of the records would be
24 longer.

25 MR. VAN ETEN: And the amount of time it would take

1 to do a vehicle inspection, a level 5 inspection, during a
2 compliance review, how much time would it take to do a single
3 vehicle?

4 MR. MILLER: The most recent data analysis that I
5 looked at prior to this hearing, indicated that level 5s take
6 on an average -- a level 5 inspection would be that which is
7 conducted as part of the compliance review process. It's just
8 looking at the vehicle. The average time for inspection in our
9 national database appeared to be about 30 minutes. That is
10 strictly the time from the start of the inspection to the end
11 of the inspection. It does not include any preparation time of
12 establishing the safe location to conduct that inspection.

13 MR. VAN ETEN: Correct. Thank you. Now what are
14 now the criteria for inspecting or not inspecting carrier's
15 vehicles during a compliance review? In other words, what
16 criteria is used by the reviewing officer whether he's going to
17 do an on site inspection of the vehicle or not. Could you give
18 us some details on that please?

19 MR. MILLER: The FMCSA believes that the true measure
20 of safety management oversight of the motor carrier, their
21 safety management controls, if you will, is demonstrated
22 through successful completion of roadside inspections through
23 actual performance over the road. That's why we rely heavily
24 on the prior inspections conducted by our state and federal
25 partners during standard operations of the motor carrier. The

1 current procedures call that if there's not sufficient
2 inspections in the prior 12 months, at the time of the conduct
3 of that compliance review, that the investigator would first
4 determine whether or not there are vehicles available at the
5 carrier's place of business, and if they are, is it safe for
6 the inspector or the investigator to conduct those inspections
7 at the carrier's place of business as part of the process to
8 augment the roadside data that we already have for the motor
9 carrier.

10 MR. VAN ETEN: And you indicated that there were --
11 if there were not sufficient numbers of roadside inspections,
12 that would be an accurate picture of what the carrier's fleet
13 is like, what, what is, what is determined or how do you
14 determine what is sufficient?

15 MR. MILLER: The current procedures call for a
16 minimum of three roadside inspections to receive a safety
17 fitness determination. Our sampling procedures speak to the
18 size of the motor carrier, you know, if they have a larger
19 fleet, a very large fleet, it would ask that we look at a
20 larger number of roadside inspections as the sampling criteria
21 for the vehicle out-of-service rate as part of the compliance
22 review process.

23 MR. VAN ETEN: And those numbers were derived how?

24 MR. MILLER: They were derived through -- I don't
25 know the specifics as to how they were developed as part of our

1 sampling process, because I was not party to that decision
2 making process, but essentially they based it on a relative or
3 representative sampling of the carrier's operation, based on
4 the number of vehicles that they operate, a relative sampling
5 of it based on that size of operation.

6 MR. VAN ETEN: Thank you. As this applies to
7 motorcoach operations, and we've had a number of discussions
8 back and forth about how many motorcoach inspections are being
9 done on the roadside and how that's increased and those kinds
10 of topics. I'm wondering, those inspections that we're seeing
11 done on the roadside, are they level 1 inspections, level 3
12 inspections? What are they? Level 2 inspections.

13 MR. MILLER: I happen to have that data here. Bear
14 with me one second, sir. The -- of the, of the 17,208 vehicle
15 inspections of motorcoaches conducted in FY 2006, approximately
16 3100 of them were level 1s, almost 4200 of them were level 2s,
17 over 7,000 level 3s, 18 level 4s, and nearly 2800 level 5
18 inspections.

19 MR. VAN ETEN: Okay. Thank you. So if it takes 30
20 minutes to do 1 vehicle inspection, is that the basis upon
21 which you're determining whether or not this is -- becomes
22 resource intensive? Is that --

23 MR. MILLER: The actual time to conduct the
24 inspection is not a primary decision maker in that policy
25 decision. Again, I go back to the issue of vehicles being

1 available as well as the safety of the investigator to conduct
2 it. As a standard practice of our state partners, they
3 typically will conduct roadside inspections in two person
4 teams, one person communicating with the driver during the
5 conduct of the inspection, while the other may be crawling
6 under the vehicle. Again, the safety of our staff is our
7 number one priority as to the safety of the traveling public.

8 MR. VAN ETEN: The thrust I guess of my question was
9 the thoroughness of the investigation. If we're only doing a
10 few relatively speaking level 1s on the roadside, and we can do
11 a much more thorough inspection of the vehicle at the terminal,
12 might that not be a better indicative of what the carrier's
13 fleet's all about?

14 MR. MILLER: I understand the question, sir. With
15 regard to motorcoach operations, the conduct of a level 1
16 inspection for the motorcoach as we heard in some of the
17 testimony yesterday, as well as I believe it was mentioned
18 again this morning, that you need specialized equipment to get
19 under the undercarriage of a bus, whether that be through the
20 use of a special ramps or a pit for which the inspector can get
21 underneath the bus to do the adequate undercarriage inspection.
22 Many of these small bus operators do not have a pit facility
23 there at their place of business, and in often cases, the
24 parking lots and whatnot that they have in their operation,
25 would not be sufficient enough to put the ramps in safe

1 locations to bring the bus up for a roadside inspection.

2 MR. VAN ETEN: Thank you.

3 MS. PERROT: I'm going to turn now to emergency
4 information within the motorcoach and pre-trip information
5 that's given to passengers. We have three recommendations, one
6 is H-04-18 which requested a posting of an emergency phone
7 number and interior of motorcoaches for passengers to use. H-
8 99-7, we asked for guidance on information to be included in
9 safety briefings to the passengers and H-99-8 is to provide
10 the -- well, and to provide it to the passengers, H-99-8.
11 Sorry.

12 Could you please provide some specific details on
13 what is now being accomplished with these recommendations and
14 the information that's been developed to be provided motorcoach
15 passengers? I believe that you have some new information.

16 MR. MINOR: Yes, we do. The Federal Motor Carrier
17 Safety Administration's Commercial Passenger Division has been
18 working with the industry, and that includes the American Bus
19 Association and the United Motorcoach Association, to develop
20 some recommended guidelines and practices on pre-trip safety
21 briefings for the passengers, and we're prepared to publish the
22 Federal Register notice in the very near future, announcing our
23 plans of working with the industry and the contents of that
24 safety briefing material so that it will be out there for
25 public comment so that all interested parties can respond to

1 our plan.

2 MS. PERROT: And does this include downloadable
3 information, like electronic files? Are informational
4 pamphlets being developed as well?

5 MR. MINOR: We would also develop educational
6 pamphlets and educational material would be posted at our FMCSA
7 website so that all interested parties can download the
8 information and make copies of it and pass it out to passengers
9 and other interested parties.

10 MS. PERROT: And will you have an explanation or some
11 type of guidance to go along with this on the website to
12 explain how it should be best used or how it could be best
13 used?

14 MR. MINOR: Yes, we will continue to work with the
15 motorcoach industry to make sure that there are some uniform
16 guidelines provided to all the passengers and there's uniform
17 information on how the emergency exits are used, and what to do
18 in the event of an emergency.

19 MS. PERROT: And where on the website do you plan on
20 putting that?

21 MR. MINOR: That information, we'll work that out
22 with the public and it will be announced in the Federal
23 Register notice. So we will make it readily available at our
24 website so that hopefully folks will not have to dig down deep
25 into the website and go searching for it. It will be prominent

1 at our website.

2 MS. PERROT: Thank you.

3 MR. VAN ETEN: Just a real quick follow up. Are
4 there any plans to make this a mandatory practice or to hand
5 out this material to folks as they get on the vehicle or is
6 this strictly going to be a voluntary program that the carriers
7 can follow or not follow:

8 MR. MINOR: We recognize the nature of the
9 recommendation. The recommendation was to make it mandatory,
10 and we thought as a first step, let's try to go with some
11 voluntary guidelines and see how well that works, and in the
12 event that we get some feedback from the passengers, that they
13 are not receiving this information from the motorcoach
14 operators, then we would consider a rulemaking potentially in
15 the future.

16 MR. VAN ETEN: Just a follow up to the follow up.
17 As you just indicated, you would rely upon passengers to say
18 whether or not they got this information. If passengers were
19 even unaware that they're supposed to have this information,
20 how would they know to tell somebody they didn't get it?

21 MR. MINOR: Well, just as we have some information at
22 our website to help the passenger community identify safe
23 motorcoach operations to choose for their travels, we'd also
24 make that information available at the website in such a manner
25 that passengers or potential passengers that visit the website

1 would also know that we've got this educational material out
2 there. We would also, from time to time, work with some of the
3 industry associations to monitor how well this information is
4 being delivered, so that as we get more and more feedback from
5 the passengers that they're not receiving the information or in
6 the event that they are getting it, and they understand it
7 thoroughly, that would help us better determine what future
8 steps we should take.

9 MR. VAN ETEN: Very good. Thank you. I'd like to
10 move next to recommendation H-05-3, which is to include
11 inspection of motorcoach tires for appropriate speed rating in
12 the Appendix G, Inspection Requirements. In an '05 FMCSA
13 response, they indicated that Section 396.3 and 396.7,
14 adequately cover this requirement, and that enforcement action
15 may be taken at the roadside and then in your July 28, '06
16 response, you basically said the same thing. So I have two
17 questions in regards to that. You indicated, number one, that,
18 that a vehicle when equipped with tires that have an
19 appropriate speed -- that have an inappropriate speed rating at
20 the time of inspection, but may subsequently replace the tires
21 with a lesser speed rating, could occur without violating the
22 periodic inspection rule.

23 My question is don't you think this could occur with
24 any vehicle part that's examined during the annual inspection
25 and that wears out or is exchanged between the annual

1 inspection times?

2 MR. MINOR: I think the question goes to a basic
3 issue of how our regulations are structured. We have an
4 overall requirement that a motor carrier have a systematic
5 inspection, repair and maintenance program to insure that the
6 vehicles are in safe and proper operating condition at all
7 times, that's all times throughout the year. We also have
8 requirements that the carrier have the annual inspection which
9 is what Appendix G is used for. So that when they're looking
10 at the checklist in Appendix G, that only applies for the
11 annual inspection, and it's the overall requirement that
12 carries out the systematic inspection repair maintenance
13 program that ensures that the vehicle is in safe and proper
14 operating condition throughout the year. So that
15 responsibility is clearly placed on the carrier to ensure the
16 safe operation of the vehicle throughout the year, not just
17 during the annual inspection. That's why we believe that the
18 recommendation to put specific guidelines in Appendix G really
19 doesn't carry that much weight with the industry because it
20 would just be a once a year inspection, and we think it's more
21 important to focus on the overall requirements throughout the
22 year.

23 MR. VAN ETEN: I guess that brings me to my next
24 question is, although a carrier may recognize that using a
25 lower speed rate of tire may not be wise, interpreting that to

1 mean that it's unsafe under the provisions of 396.3, or that it
2 will likely cause an accident or breakdown under 396.7, is not
3 all that clear. Do you believe that by specifying the
4 prohibition, it would be clearly -- and it would clearly state
5 the FMCSA's interpretation, that exceeding the limit of the
6 speed rating on the tire is an unsafe practice?

7 MR. MINOR: I think that goes back to the basic
8 requirements that the carriers have a systematic inspection and
9 repair maintenance program, and that they be capable of
10 understanding what's an unsafe operation. If they have a
11 motorcoach that they plan to use at full highway speeds of 65
12 or 70 miles an hour, yet they've got mechanics that are
13 installing tires that are rated at speeds not to exceed 55
14 miles an hour, they should recognize that there is a gap there
15 and know that the installation of those types of tires on their
16 motorcoaches or other types of vehicles, that that's just not
17 the right thing to do, but there should be some consistency
18 between the types of tires that they're using on commercial
19 motor vehicles and the type of operations that you're going to
20 undertake. So that we're relying on the carrier to have some
21 knowledge and understanding of the appropriate maintenance
22 practices for their vehicles in order to comply with the
23 regulations.

24 MS. PERROT: I wanted to follow up with that. For a
25 private motor carrier passenger, somebody who was operating one

1 motorcoach for example, such as a church or student group, a
2 Boy Scout group, how would they know how to find these
3 regulations? If they're not a regular motor carrier with
4 multiple buses on the road, constantly involved in this
5 industry, how would they know where to find the information and
6 to understand the information that they would need to follow?
7 So how would they know to go and look in Part G -- Appendix G?
8 How would they know to go look in Subpart B? How would they
9 know how to look up any of this information just coming in off
10 the street?

11 MR. MINOR: For new private motor carriers of
12 passengers, just coming in off the street, there are two
13 methods to learn more about the safety regulations. First, we
14 have our educational technical assistant package that's posted
15 at our website, and it's relatively easy to find. It provides
16 all motor carriers with a quick summary of the basis safety
17 requirements, whether it's driver qualifications or inspection,
18 repair or maintenance, and we also have a special initiative
19 just focusing on some non-traditional type motor carrier
20 operations such as the church groups to help educate them about
21 the things that they need to do to achieve compliance with our
22 safety regulations. So we recognize that these are not our
23 traditional for hire motor carriers, and we do have special
24 outreach materials that are readily available to help them
25 understand what's necessary to achieve compliance with the

1 safety regulations.

2 MS. PERROT: And would this information be a signal
3 to you when they bought the vehicle? How would you know to go
4 and find them or how would they know to contact you once they
5 bought that type of vehicle?

6 MR. MINOR: Some of the new private motor carriers,
7 such as some of the church groups or others, they may not
8 necessarily be well aware of our requirements, but we have as
9 many publications as we can put out there to try to alert
10 various audiences as to what the requirements are. We also
11 have another publication of who must comply with the Federal
12 Motor Carrier Safety Regulations that was recently updated, as
13 well as some other pamphlets and brochures that we put out
14 there at various locations on the Internet to make sure that
15 all the different communities that are subject to our safety
16 regulations have some material out there to try to point them
17 in the right direction, that there are some safety requirements
18 that do apply to them and that it is very important for them to
19 be knowledgeable about those requirements and to basically set
20 up the safety management controls necessary to achieve
21 compliance with our regulations.

22 MS. PERROT: And in response to a companion
23 recommendation that you talked about, these pamphlets that
24 you've created, you also mentioned the possibility of doing an
25 outreach program once funds were available. What is the status

1 of that outreach program?

2 MR. MINOR: I believe we have posted some of the
3 material at our website already. So the outreach program is
4 moving along very nicely.

5 MS. PERROT: And are you still going to be working
6 with churches and various groups to further the educational
7 effort to try to reach a larger population?

8 MR. MINOR: Yes, we do intend to keep working with
9 the associations and groups that represent these non-
10 traditional motor carriers to make sure that they have the
11 information readily available to them and that they can share
12 with their membership.

13 MS. PERROT: Thank you.

14 MR. VAN ETEN: Thank you. I'd like to now move to
15 recommendation H-05-4, to conduct a study on the effectiveness
16 of the self-inspection and certification process for annual
17 vehicle inspection requirements and take corrective actions as
18 necessary. I would like to refer you to the FMCSA response
19 from July 28th, wherein you cite the report to Congress on the
20 potential safety advantages of a federal rule to require a
21 uniform national display policy for inspection stickers on
22 commercial motor vehicles. I couldn't say that in one breath.
23 And you cite that as supporting the position that no action is
24 required with respect to self-inspection and certification.

25 My question is really this, that it seems to me the

1 recommendation dealing with this -- is dealing with carriers
2 self-inspecting their own vehicles and certifying that they
3 have, in fact, passed that inspection, and under this report
4 we've just cited here, the, the comparison was made between
5 states that had a mandatory inspection program to those states
6 that did not have a mandatory inspection program, and I believe
7 the assumption was that the states that had a mandatory
8 inspection program had inspectors that were, for lack of a
9 better term, third party inspectors, either somebody from the
10 state or a private mechanic or something like that, that has
11 been certified to conduct these inspections. And that the --
12 when the results were looked at, the out-of-service results
13 were looked at, it was shown that the states that did not have
14 a mandatory inspection had a lower out-of-service rate than the
15 states that had a mandatory inspection. And I believe in part,
16 the FMCSA based their belief that there is no action required
17 based upon that study, at least in part upon that study.

18 And when I went back and I read the study, it shows
19 on page 17 of that study, at least on my page 17 of that study,
20 that carriers within the states that had a mandatory inspection
21 program still permitted companies to do self-inspections for
22 the annual inspection if they had an employee who was certified
23 to do that by the state. So it doesn't seem to me to get to
24 the issue of how well self-inspections actually occur. So
25 could I get a response from the comments that I've just made?

1 MR. MINOR: Yes. As part of our annual inspection
2 rule, we allow motor carriers to do self-inspections but only
3 if they have qualified personnel and adequate inspection
4 facilities. So that any carrier that's been doing a systematic
5 inspection, repair and maintenance program throughout the year,
6 if they're qualified mechanics and inspectors, we don't believe
7 there's any problem with them doing that one self-inspection to
8 satisfy the annual inspection rule. In other words, they've
9 got people that are knowledgeable about the inspection criteria
10 under Appendix G. They've got adequate inspection facilities
11 right there at their facilities. So they are certainly
12 qualified to do the annual inspection, and there is no
13 particular safety benefit that we're aware of by prohibiting
14 them from doing the self-inspection, and forcing them to go to
15 a third party, that may not necessarily have any greater
16 technical expertise than the carrier's own mechanics.

17 MR. VAN ETEN: I think the underlying assumption
18 here or suspicion, in any event, is that if you have your own
19 employee, the company has its own employee inspecting his own
20 vehicles, and certifying that those vehicles are in a safe
21 operative condition, that it somehow putting the fox in charge
22 of the hen house kind of an analogy. What -- do you have a
23 response to that? That's what it seems to me. And that that's
24 what the recommendation should try to get at, was to try to
25 have the FMCSA look at that particular practice and whether or

1 not that was actually insuring that the vehicles are in safe
2 operating condition.

3 MR. MINOR: Well, again I'd like to emphasize that
4 the annual inspection rule is just one part of our inspection
5 and repair maintenance set of regulations. We have a
6 requirement for the motor carriers that have a systematic
7 inspection, repair and maintenance program, to insure that the
8 vehicles are in safe and proper operating condition every
9 single day of the year. The annual inspection rule just
10 applies to that one inspection. So that's just one day out of
11 the year when they do this comprehensive inspection that's done
12 by an individual that meets our minimum requirements. However,
13 it's the larger requirement that the carrier make sure those
14 vehicles are in safe and proper operating condition throughout
15 the year. So allowing the carrier to do that one inspection,
16 that one day out of the year, on its own premises, we don't
17 believe that compromises safety in any way, nor does it reduce
18 the carrier's responsibility for insuring the safe and proper
19 operating condition of that vehicle throughout the year.

20 MR. VAN ETEN: I would agree with the second part of
21 that. I'm just -- not to belabor the point, but has, has the
22 FMCSA taken a look at out-of-service rates for those carriers
23 that do self-inspection, that have self-inspection versus those
24 that don't have self-inspection? Has there been any sort of
25 study to look at that?

1 MR. MINOR: No, we have not set up a special study to
2 compare the out-of-service rates of carriers that do self-
3 inspections under a state program versus the carriers that go
4 through a third party. We have not done that type of detailed
5 comparison.

6 MR. VAN ETEN: All right. Thank you. Okay. Moving
7 on, to the next recommendation, H-05-5, which is include
8 inspection of motorcoach seat anchorages in Appendix G, and
9 this, this -- the FMCSA response again is basically the same as
10 we had before, that the requirements of 396.3(a)(1) would cover
11 that as an unsafe part.

12 My question is, is there any specific inspection
13 requirement that could cause an inspector to actually look at
14 the anchorages themselves or would get any inspection procedure
15 that would reveal that anchorages are not secure?

16 MR. MINOR: There's not a specific rule currently in
17 our regulations that requires someone to actually stop and
18 inspect the seat anchorages. However, we do have the
19 requirement that the carriers have a systematic inspection,
20 repair and maintenance program, that would cover the entire
21 vehicle, not just certain portions of the vehicle. And we also
22 have a requirement for drivers to do a driver vehicle
23 inspection report at the end of each workday so that any
24 defects or deficiencies that the driver observes during the
25 workday or any defects or deficiencies that are reported to the

1 driver, that would include defects or deficiencies reported by
2 the passengers on a motorcoach. Any of those defects have to be
3 noted on the driver vehicle inspection report, which the
4 carrier is responsible for making corrective actions.

5 MR. VAN ETEN: There's nothing specifically in the
6 annual inspection requirements at Appendix G that would lead an
7 inspector to examine the anchorages or to check the seat for
8 anchorage defects. Is that correct?

9 MR. MINOR: That is correct. There's not an item in
10 the Appendix G checklist that specifically focuses on the seat
11 anchorages.

12 MR. VAN ETEN: And I don't want to put words in your
13 mouth, but is it the FMCSA's position that the, the present
14 inspection process that would go -- that an inspector would
15 follow on the interior of a motor coach would uncover that --
16 any defects with the seat anchorages?

17 MR. MINOR: We believe that an inspection that's
18 performed by a carrier with a rigorous inspection, repair and
19 maintenance program, it would uncover the problems with the
20 seat anchorages, which certainly one of the passengers would
21 have reported to them as they sat down in the seat and noticed
22 that it was not stable, so that if they had any type of
23 inspection, repair or maintenance program at all, that they
24 would uncover the problem with the seat anchorages and that
25 they're supposed to take corrective action.

1 MR. VAN ETTEN: Thank you.

2 MR. MILLER: If I might add, Mr. Van Etten, that
3 during the compliance review process, then our staff would look
4 at those driver vehicle inspection reports to insure that the
5 motor carrier did effect repair or come to some conclusion as
6 to the proper response.

7 MR. VAN ETTEN: Yes. Thank you.

8 MS. PERROT: Just to clarify, our recommendation
9 actually asks for the development of a method of inspection.
10 What is the current practice? It sounds like there isn't one.

11 MR. MINOR: Based on our understanding of the design
12 and installation of seat anchorages, we don't believe it's
13 really a complex issue that requires specific guidelines on how
14 to inspect them, that if the inspector just walks up and down
15 the aisles and gets a good grip on the seat, to just see if the
16 seat is firmly attached, that would give them a pretty good
17 indication that either the seat is loose or that there is some
18 underlying problems with the anchorages for that seat. As long
19 as the seat is firmly in place, so that when passengers sit on
20 the bench or sit on the seat, that it doesn't move, that would
21 give a good indication as to whether the seat anchorages are
22 proper and are in proper condition.

23 MS. PERROT: Personally I would think that jiggling a
24 seat or moving a seat would be very different than the force of
25 an accident where the vehicle's suddenly stopped, and the

1 person behind is pushed into the seat by the force of the
2 accident or just the actual G force of that violent stop and
3 the continued movement of the items within the coach. Do you
4 have any comments on that?

5 MR. MINOR: I understand the nature of the question,
6 and it's getting at a bigger issue. If you're asking do we
7 have a procedure where we're actually testing the strength, the
8 in-service strength of a seat anchorage, no, we do not, and we
9 believe that it would be rather difficult for most motorcoach
10 operators to have an inspection program that would actually
11 involve measuring the strength, the in-service strength of the
12 seat anchorages to make sure it's capable of withstanding a
13 certain amount of force.

14 MS. PERROT: Thank you.

15 MR. VAN ETEN: Moving onto our next area, which is a
16 brake related area, recommendation H-02-15, to establish
17 procedures for a pre-trip brake adjustment inspection, and to
18 cut to the chase here on the July FMCSA response, you indicated
19 that you have contracted with Patel (ph.) to do a study on
20 whether or not this would be a feasible practice, and you
21 indicated that that would be available in the fall of 2006, and
22 that the FMCSA is currently studying the results of that study.

23 Could you provide some of the details of the study as
24 it relates to driver conducting brake adjustment tests during
25 pre-trip inspections?

1 MR. MINOR: The study focused on the level of
2 training that we believe it would be necessary for the driver
3 to effectively inspect the vehicle and discover any defects or
4 deficiencies that were not previously noted by a mechanic that
5 serviced the vehicle, and how much it would cost to provide
6 that level of training, the availability of that type of
7 training, and the cost. So we looked at those as factors to
8 consider whether or not it would be appropriate to initiate a
9 rulemaking on that issue.

10 MR. VAN ETEN: In the model CDL manual, one of the,
11 one of the items in which a driver is tested on is brake
12 adjustment, if you go through that whole series of items that,
13 that a driver is trained to do and is required to know. I'm
14 not -- I'm seeing a disconnect between that particular process
15 where they are required to know how to do a brake adjustment
16 test, and the FMCSA's contention that there needs to be some
17 special training as in 396, for a brake inspector and mechanic.
18 I'm seeing a disconnect there. Could you explain the
19 differences for me so that I could understand that?

20 MR. MINOR: Well, as part of the testing for drivers
21 to obtain their commercial driver's license, those drivers that
22 are going to operate airbrake vehicles, we're looking for some
23 indication that the driver is capable of doing a basic visual
24 inspection of the brake system to make sure that all of the
25 components are in proper working order before taking the

1 vehicle out on the public road. We're not necessarily looking
2 for the driver to be able to make repairs to the brake system,
3 or to actually get under the vehicle and adjust the brakes, but
4 we would like to make sure that the drivers are capable of
5 doing some basic inspection tasks related to the brake system
6 to insure that the vehicle is in safe and proper operating
7 condition before they take it out onto a public road.

8 And with regard to the recommendation, the way we
9 view that, we were considering having the driver take his level
10 of knowledge and skills to a higher level, where you would
11 actually want the driver to potentially adjust the brakes, and
12 under our current regulations, the driver would not be allowed
13 to adjust the brakes unless the driver meets the requirements
14 of brake inspector, and that would include basically one year
15 of training and/or experience at doing that specific brake
16 related inspection, repair and maintenance task.

17 MR. VAN ETEN: Just as a general comment, I think
18 the FMCSA may have taken that -- the recommendation for testing
19 brakes for brake adjustment to include -- testing for the brake
20 adjustment to a position where he had to actually adjust the
21 brakes, and I'm not sure that that's in the recommendation.
22 But I understand at least how the FMCSA got to that -- their
23 position. So I thank you for that.

24 Okay. Moving onto the next recommendation, H-02-17,
25 rate companies unsatisfactory if the mechanics and drivers

1 responsible for maintaining brake systems are not qualified,
2 and I'm going to -- well, do a little history of the FMCSA
3 responses.

4 In May of '04, FMCSA indicated that there are brake
5 mechanic requirements currently in place in Part 396, and that
6 an enforcement action could be taken against the company that
7 does not utilize qualified inspections.

8 I guess my question for that is how many such actions
9 have been taken in the last five years?

10 MR. MILLER: The -- our data indicates that we've
11 taken four actual enforcement actions against violation so
12 396.25, but it's been noted -- during the compliance review
13 process, it has been marked as a violation relatively on
14 average over the last 5 years about 3.5 percent of the time.

15 MR. VAN ETEN: And an opinion, would that be high?
16 Would that be low? Is that something to be concerned about or
17 are we just asking the questions?

18 MR. MILLER: The number of enforcement actions in any
19 particular regulatory areas is not indicative of good, bad or
20 indifferent with regards to whether it's enough or not enough.
21 Again, remembering that enforcement is one of ultimate
22 sanctions that we do take with the motor carrier. Again, the
23 purpose of that enforcement action is to help insure
24 remediation of the problem. We expect as we have stated
25 earlier, that with the citation of the violation on the

1 compliance review, that the motor carrier would take note of
2 that violation and take immediate action regardless of whether
3 it's critical or acute, to remedy all violations of the
4 regulations as a result of the compliance review.

5 In the four instances where enforcement action was
6 taken for that specific violation, it's my expectation that
7 that investigator believed that that enforcement was necessary
8 to get the proper attention of the motor carrier to remediate
9 the problem.

10 MR. VAN ETEN: Thank you. In the FMCSA response
11 dated September of '05, you indicated that a violation of
12 396.25(c) could constitute a critical violation, yet that
13 396.25(c) is not listed in Part 385, as either a critical or an
14 acute violation. Are there any plans to upgrade that violation
15 to acute or critical?

16 MR. MILLER: As in my earlier testimony today I
17 referenced a violation severity study that we have underway
18 with the Volpe Center, through the results of that study, and
19 the model which we'll operate in the future, as a result of
20 that study, it's -- I can't tell you what the results will be
21 specific to 396.25, but if the severity study does indicate
22 that it rises to a level of critical or acute, then we
23 certainly will take action to include it in our critical and
24 acute standard.

25 MR. VAN ETEN: And I may have missed this before,

1 but do we have a timeline for when that might be accomplished?

2 MR. MILLER: The severity study, we believe we will
3 have the results of the first phase of that study or I'm not
4 sure exactly whether it's a two phase study or not, I'm not
5 intimately involved in that study, but we expect results in the
6 spring of 2007.

7 MR. VAN ETEN: Thank you. I remember that now.

8 MS. PERROT: Just as a follow up, once you receive
9 the results of that study, do you have any further plans? Do
10 you have any further implementation of those results?

11 MR. MILLER: The study itself is directly related to
12 relative risk of each and every regulation that we have. We
13 haven't decided the final approach as to do it. One of the
14 approaches would be through, as we indicated in one of our
15 responses, the comprehensive safety analysis of 2010, the
16 overarching evaluation of all the regulations would become part
17 of the overall operational model as we assessed motor carrier
18 safety performance both roadside and otherwise. We may, and
19 again I say may because I'm not the ultimate decision maker
20 here, we may decide in anticipation of the CSA 2010 operational
21 model, go to notice of proposed rulemaking with regards to
22 updating the current critical and acute regulations that are in
23 the Part 385, Appendix B.

24 MR. VAN ETEN: Okay. Moving on to H-02-18, require
25 formal training, testing and certification for brake inspectors

1 under 396.25. FMCSA responds again as is part of the Patel
2 study, and so again I'll ask, could you provide some of the
3 information from that study that pertains to this particular
4 recommendation?

5 MR. MINOR: Part of the focus of that study was to
6 look at the cost of training for the brake mechanics, a
7 rigorous training program that would involve testing and
8 certification, to look at the availability of such training and
9 to try to assess the potential safety benefits of doing all of
10 those things. So that's part of the process of gathering data
11 to consider whether or not to initiate a rulemaking.

12 MR. VAN ETEN: And a timeline for the
13 implementation, or the release of that public information on
14 that study?

15 MR. MINOR: We expect to release the final report
16 later this year or early next year.

17 MR. VAN ETEN: Uh-huh.

18 MR. MINOR: And we'll be happy to share a copy with
19 the Board.

20 MR. VAN ETEN: And is there any projected timeline
21 for implementation?

22 MR. MINOR: If the study shows that it would be cost
23 beneficial to potentially consider a rulemaking to upgrade the
24 standards for brake inspectors, then we would set up a separate
25 rulemaking schedule as to when we would publish the notice of

1 proposed rulemaking, requesting public comment on the issue.

2 MR. VAN ETEN: Thank you.

3 MS. PERROT: Okay. Turning to educating drivers on
4 retarders, retarder use. We asked that you create a booklet to
5 talk about the various types of retarders and their effect on
6 low friction coefficient roadways. You mentioned back in 2003
7 that you were consulting with UMA and ABA. In '04, you had
8 created a committee to create an informational booklet, and you
9 hired a contractor. There's information in the CDL manual and
10 in your July response, you mentioned that the booklet would
11 soon be available on the FMCSA website in early 2007.

12 And just to follow up on that information, could you
13 tell us a little bit more about the booklet? What's the
14 current status of the booklet? And what type of specific
15 information will be included in that booklet? When will it
16 address this recommendation? And I can break those down if you
17 want.

18 MR. MINOR: Yes. Our Commercial Passenger Safety
19 Division has been working with the industry to develop a
20 booklet, and we've already completed the draft and will have
21 that on our website in early 2007. The booklet will basically
22 be targeted towards drivers to help them better understand the
23 proper circumstances under which to use retarders and more
24 importantly, when not to use the retarders on their vehicle, to
25 insure that they don't have any stability in control incidents

1 while driving down the public roads. And we believe this
2 booklet is going to be very effective. It's similar to the
3 booklet that was put out many years ago to educate the truck
4 drivers about the proper use of the retarders, and that was a
5 publication that we developed working with the National Highway
6 Traffic Safety Administration and the manufacturers of heavy
7 vehicle brake systems to make sure that there's proper
8 information out there for commercial motor vehicle drivers, to
9 insure the proper use of retarders.

10 MS. PERROT: Great. I actually had a few calls from
11 concerned citizens, like concerned motorcoach drivers, about
12 this booklet asking me if the information was already
13 available, even as many as six months ago. So -- and I noticed
14 you said it would be available on the website. It this again
15 going to be placed in an easy to find area of the website,
16 right up front or would it be easily searchable?

17 MR. MINOR: Yes, it will be easily searchable.

18 MS. PERROT: Thank you.

19 MR. VAN ETEN: Is this booklet going to be provided
20 to trainers, driver trainers, private companies, folks like
21 that, that publish these articles or conduct these classes for
22 driver's training?

23 MR. MINOR: Yes, the publication will be readily
24 available to all interested parties.

25 MR. VAN ETEN: Okay. And, and again just for

1 clarification, you have -- the information that has -- will be
2 in this booklet is as a result of this committee meeting
3 between UMA and ABA and other carriers, maybe ATA. Is that
4 correct?

5 MR. MINOR: Yes, that is correct. We've been working
6 with our stakeholders and partners to make sure that we have
7 buy in from all of the interested parties, to make sure there
8 is agreement that this is the appropriate information to
9 present to drivers.

10 MR. VAN ETEN: Okay. Thank you very much.

11 MS. PERROT: In the driver related category, we have
12 a recommendation H-98-8, that states -- that asked you to work
13 with NHTSA, the ATA, the Teamsters, and Motor Freight Carrier
14 Association to develop a simulator based training program.

15 Back in 1999, you responded that you were studying
16 the feasibility of a marketable program. In 2000, you
17 completed a validation of simulation technology in the
18 training, testing and licensing of tractor trailer drivers. In
19 May of this year, you responded -- you indicated that the
20 program is being worked on in the CSA 2010 initiative and in
21 July, you responded that the validation study was completed in
22 2005, and that there is a phase 2, it's a multiple phase
23 project. So phase 2 will take about 4 years to complete, and
24 we're just wondering if you could tell us some more information
25 about this phase 2, and what the current thinking is about the

1 use of simulators in commercial vehicle driver training?

2 MR. MINOR: The agency has been studying the use of
3 simulator technology for quite a while now, looking at the
4 feasibility of using simulators in driver training programs,
5 and how effective it would be in producing or training drivers
6 and educating drivers about certain hazardous maneuvers or
7 emergency maneuvers I should say, because it allows you to test
8 their abilities in a relatively controlled and safe environment
9 where there's no risk to the vehicle or the driver, that you're
10 relying strictly on a simulator to assess the driver's
11 performance capabilities.

12 In phase 2 of the study, what we will do is try to
13 use a simulated technology to compare the driving performance
14 of drivers who have gone through a rigorous 8 week or so
15 training program, compared to drivers who have gone through a
16 much shorter training program, compare that performance with
17 drivers who haven't gone through any type of formal training
18 program, so that you can compare the driver performance using
19 an objective tool like a simulator.

20 MS. PERROT: And we realize that this recommendation
21 is now about 8 years old, and that it's gone through several
22 different studies and iterations it seems at least from our
23 correspondence history, and could you explain or could you
24 discuss the reason for this lengthy response to something that
25 seems on the surface to be a very simple recommendation to

1 accomplish?

2 MR. MINOR: We didn't necessarily view it as being
3 quite that simple. Simulator technology is constantly
4 evolving, and although it's commonly used on the aviation side
5 of transportation, it's not that common on the commercial motor
6 vehicle side. So that there is a matter of doing some research
7 to actually assess the feasibility of using simulators, to make
8 sure that we had a thorough understanding of the performance
9 capability of simulators, how closely the conditions in the
10 simulator resembled real world conditions. So we had to do a
11 careful amount of research or research focusing on the
12 performance capabilities of the simulators, making sure that we
13 could actually validate the results from a simulator with real
14 world driving performance.

15 So although on the surface it may have seemed like a
16 simple recommendation, we thought that it required a lot of
17 research to make sure that we were solid in our understanding
18 of the simulators and that we had a solid basis for trying to
19 use the simulators to assess driver performance and to possibly
20 influence what we do in the future concerning entry level
21 driver training.

22 MS. PERROT: And in June of 2006, June of this year,
23 we had a meeting, and you came over and you briefed our Board
24 about the CSA 2010 initiative, and you mentioned that this
25 recommendation while it would not be directly affected by that

1 initiative, that there would be some integration with that
2 initiative and accomplishing this recommendation. Could you
3 talk a little bit to that aspect, how CSA 2010 is going to
4 parallel this recommendation?

5 MR. MILLER: As Mr. Minor indicated, the agency
6 believes the use of simulators may be better suited to identify
7 the proper types of over-the-road training that drivers ought
8 to take, as part of their training process. As part of the CSA
9 2010 initiative, one of the things we're looking at is
10 intervention, and intervening with drivers and motor carriers
11 at an earlier time as their safety performance starts to spike
12 if you will. In other words, if we see the data coming in,
13 indicating that there's a problem with driver safety
14 performance, that may be training related, that we may through
15 an intervention process, require the driver to take certain
16 specific training to remediate the poor safety behavior.
17 That's the indirect link that we were referring to.

18 MS. PERROT: Thank you.

19 MR. VAN ETEN: I'd like to next move to
20 recommendation H-02-8, to add to the driver disqualification
21 criteria, drivers of slow moving or low clearance vehicles, who
22 failed to notify the railroad before crossing when required by
23 state law.

24 In the September of '04 FMCSA response, you indicated
25 that Section 383.51 covers this without the need for an

1 additional item to Part 383, and 383 section -- 383.51
2 indicates that if any of these violations -- if you have any of
3 these following violations, that are in violation of state law,
4 you're required to stop but failed to check on the tracks that
5 are clear, you failed to have sufficient space before there's a
6 problem or you failed to cross due to insufficient clearance.
7 This particular recommendation goes neither to checking to see
8 if the tracks are clear or there's sufficient space nor
9 insufficient clearance, but the amount of time that it takes
10 some of these slower moving vehicles to cross the tracks. And
11 so I think our response was that that was not a sufficient
12 response to the recommendation.

13 Then in the July 28th response, you indicated that
14 you're developing a visor card for vehicles or for trucks.
15 You're working with Operation Life Saver on an informational
16 brochure that there's going to be some items placed in the CDL
17 manual, and that there was -- somebody spoke to the Specialized
18 Carriers and Rigging Association conference earlier this year,
19 and that there may, in fact, be an NPRM, that could be coming
20 out.

21 So without going any further into those things that
22 you've indicated, could you please tell us what might be
23 included in the proposed NPRM that would address this specific
24 recommendation?

25 MR. MINOR: The notice of proposed rulemaking that

1 you're referring to, that's a rule that would prohibit drivers
2 from going across the tracks unless there is sufficient room to
3 clear the tracks completely without stopping, and that's a
4 follow up on a statutory mandate from the Hazardous Materials
5 Uniform Transportation Safety Act, from a number of years ago.
6 And it follows up on our withdrawal of an NPRM that was
7 published a few years back, and there was a lot of reaction
8 from the state agencies in terms of their concern about
9 potential burdens on the states to modify the railroad grade
10 crossings or post signs at the crossings to insure that drivers
11 understand the requirements as far as crossing the tracks and
12 making sure there's enough clearance.

13 The particular rulemaking that you mentioned really
14 doesn't relate specifically to this recommendation. However,
15 we have developed the visor card that you mentioned earlier,
16 and that is currently posted at our FMCSA, and, yes, we have
17 been working with the Specialized Carriers and Rigging
18 Association to insure that there is some recommended practices
19 out there to make sure that drivers of the slow moving vehicles
20 have appropriate guidance on how to cross the tracks safely and
21 what to do in the event that they believe that they're stuck on
22 the tracks and can't get the vehicle off the tracks before the
23 train comes through, guidance in terms of who to contact, what
24 to advise them of when you're stuck, so that there's some clear
25 communications as to how to avoid having a collision between

1 the train and the truck.

2 MR. VAN ETEN: This particular recommendation came
3 out of a collision between a train and oversized, overweight
4 vehicle down in Florida several years ago, and again the issue
5 was the time that it took this vehicle to cross the tracks, he
6 had sufficient space, the tracks were clear when he began to go
7 across, and he had sufficient clearance on the vehicle. This
8 recommendation goes to the time again, and then for those
9 states which have a law that requires prior notification to the
10 railroad when a vehicle like this is going to cross the tracks
11 so that sufficient arrangements could be made that as --
12 because of the length of time it takes this vehicle to cross
13 the tracks, that a train doesn't come along and there's some
14 sort of a collision.

15 Is there anything in the works at all at FMCSA to
16 address that particular issue?

17 MR. MINOR: For those states that actually have a
18 requirement, that forces the driver to make a notification that
19 he's crossing the tracks with a slow moving vehicle, if the
20 driver fails to comply with that state requirement, that would
21 be a disqualifying offense under our current CDL regulations.
22 The way that the regulation is currently structured, any
23 violation of a federal, state or local law pertaining to a
24 railroad grade crossing, would be a disqualifying offense.

25 I think our concern at the time we discussed this

1 with the Board, and the last time we discussed this with the
2 Board staff, it was that the recommendation would place all the
3 burden on the driver with no responsibility on the carrier. We
4 believe that this is a joint responsibility between the carrier
5 and the driver, in that working with the industry associations
6 to develop some recommended practices, that will probably be
7 the most effective way to address this safety concern rather
8 than imposing additional penalties on drivers, that we didn't
9 think it was appropriate to focus all the burden on the driver
10 to make the coordination, phone calls and everything else, that
11 there was a fair amount of responsibility that rested with the
12 carriers, and that we need to work with the carrier community
13 to make sure that they understand the importance of
14 communicating with the railroad about these crossing.

15 MR. VAN ETEN: As I understand it, not every state
16 has this, this state law in place. Is the FMCSA concerned that
17 other states don't have this particular law in place, and are
18 you doing anything to encourage them to enact that particular
19 legislation?

20 MR. MINOR: We're working with the states as much as
21 possible, but we think that the most important thing is that as
22 long as there are some states that have this law in place, it
23 would help to bring about some changes in driver and carrier
24 actions, that as long as they know there are certain
25 jurisdictions in which you must take time to coordinate the

1 crossings, to make sure you notify the railroads that you have
2 a slow moving vehicle crossing, that there is enough of that
3 going on that they will seek to train their drivers and prepare
4 their drivers to do the appropriate thing at the right time
5 when they're doing these crossings, so that they're not going
6 to try to segregate their instructions so that they tell the
7 driver to make the call when you're in State A, but don't
8 bother to do that when you're in State B, as long as it's
9 prominent in enough states, they will make that a standard
10 practice with their drivers, it will be a standard practice
11 among the carriers. There is enough state regulations in
12 place, in enough jurisdictions, so that you would make that a
13 standard practice for the carriers and the drivers to make the
14 phone call that they're about to cross the tracks with a slow
15 moving vehicle.

16 MR. VAN ETEN: Just so I can summarize that, that --
17 your particular position on this recommendation, is that you
18 still feel that there is sufficient legislation, sufficient
19 rulemaking or sufficient rules in place now that would cover
20 this. Am I correct in making that assumption?

21 MR. MINOR: We think that between the states that
22 have some legislation or regulations in place and some
23 voluntary practices for the industry to adopt for use in any
24 other jurisdiction, where there may not necessarily be any laws
25 in place, that the two put together will create the atmosphere

1 where there's going to be some change in the instructions of
2 the carriers to give their drivers, and some changes in the way
3 the drivers approach these crossings so that we will bring
4 about the improvements in the procedures for crossing the
5 railroad tracks.

6 MR. VAN ETEN: But it's still your position that
7 there's no need for further federal regulations on this
8 particular issue. Is that correct?

9 MR. MINOR: Right. We do not believe that it's
10 necessary or appropriate to do rulemaking at this time, but we
11 will analyze the data and continue to work with the Board and
12 the industry to carefully monitor the situation so that in the
13 event there is an ongoing problem that suggests that rulemaking
14 may be necessary, we will look at the data constantly.

15 MR. VAN ETEN: Thank you.

16 MS. PERROT: At the last meeting when we discussed
17 this, when staff discussed this, you mentioned that there were
18 about 33 states that had adopted this legislation, this model
19 legislation. I believe it comes from the cut low (ph.). Do
20 you happen to have the current number and number of states that
21 have adopted the legislation?

22 MR. MINOR: No, I do not have the current information
23 but I can get that for you.

24 MS. PERROT: That would be great. Thank you.

25 MR. VAN ETEN: Madam Chairman, that concludes the

1 questions from the Panel.

2 CHAIRWOMAN HIGGINS: Thank you. We will now turn to
3 questions from the Parties. FMCSA.

4 MS. McMURRAY: We have no questions for this Panel.

5 CHAIRWOMAN HIGGINS: NHTSA.

6 MR. SAUL: No questions. Thank you.

7 CHAIRWOMAN HIGGINS: Sunrise.

8 MR. SCHLOTT: No questions. Thank you.

9 CHAIRWOMAN HIGGINS: Bridgestone.

10 MR. QUEISER: No questions. Thank you.

11 CHAIRWOMAN HIGGINS: ArvinMeritor.

12 MR. JOHNSTON: No questions. Thank you.

13 CHAIRWOMAN HIGGINS: Texas.

14 CAPT. PALMER: No questions.

15 CHAIRWOMAN HIGGINS: MCI.

16 MR. MURPHY: No questions. Thank you.

17 CHAIRWOMAN HIGGINS: United Motor Coach?

18 (No response.)

19 CHAIRWOMAN HIGGINS: American Bus?

20 MR. LITTLER: I'm afraid we have a few questions.

21 First question is to Mr. Miller. You mentioned a number of
22 17,000 inspections of motorcoaches over the past year. Was
23 that something --

24 MR. MILLER: That is as of -- bear with me one second
25 while I pull that data out. It was for fiscal year 2006, which

1 obviously began October 1, 2005, and it was through August 2 of
2 2006, as far as the counts.

3 MR. LITTLER: Do you have a sense of how many of
4 those coaches inspected might have been repeats or were they
5 all separate coaches?

6 MR. MILLER: I don't have that data available as
7 to -- I believe your question is were those unique individual
8 inspections --

9 MR. LITTLER: Right.

10 MR. MILLER: -- of individual motorcoaches and I do
11 not have that data available right now but we could certainly
12 do an analysis of that data to determine how many unique
13 individual motorcoaches were inspected.

14 MR. LITTLER: Thank you. Next question for
15 Mr. Minor. We were talking earlier of private carriers, and
16 how they might be led to information that you have available on
17 the website. Do you know if any of the state licensing
18 agencies are providing those pointers to these particular types
19 of carriers when they come in to register their vehicles within
20 their home jurisdictions? Are they giving them any information
21 leading them towards you?

22 MR. MINOR: No, I do not have that information.

23 MR. LITTLER: Okay. And I guess the final question,
24 and it goes specifically to this particular case that we're
25 looking at over these past few days, the 2002 education review

1 conducted by the Texas DPS of Global Limo indicated they did
2 not maintain vehicle inspection and maintenance records.
3 During the 2004 CR, they were also cited for not maintaining
4 maintenance scheduling. Neither of these situations led to any
5 enforcement action, and it would appear, at least this gives
6 the appearance that inspection and maintenance practices are
7 not critically important to safety. Based on the facts
8 presented over the past several days, will the FMCSA consider
9 revising its rating algorithm to give vehicle maintenance and
10 inspection by carriers, a greater weighted value in future CRs.

11 MR. MILLER: The information with regards to our
12 enforcement actions in Part 396, I did some analysis prior to
13 this hearing and looked at our enforcement cases since October
14 1, 2001, and determined that approximately 15 percent of those
15 cases included violations for maintenance, Part 396,
16 maintenance requirements. So I believe that the agency does
17 place adequate emphasis on the maintenance requirements through
18 our enforcement programs.

19 As far as the future considerations of the
20 maintenance requirements and data service information,
21 absolutely the agency is pursuing a data driven, real time
22 safety fitness determination process that would include true
23 performance data as part of that algorithm.

24 MR. LITTLER: Thank you. And that is all the
25 questions that we have. Thank you.

1 CHAIRWOMAN HIGGINS: Thank you very much.

2 Ms. Weinstein?

3 MS. WEINSTEIN: Thank you. I have one question on
4 self-inspection and one on safety fitness ratings. The safety
5 fitness ratings fall into six categories, general, driver,
6 operational, vehicle, hazardous materials and accident, and as
7 I understand it, the -- they are equally weighted in
8 determining the safety rating. Is that correct?

9 MR. MILLER: Yes. The six factors you're referring
10 to are a part of the safety fitness rating methodology that we
11 currently use. Each of the factors individually indicate
12 certain aspects of the regulatory requirements.

13 MS. WEINSTEIN: Can you discuss the logic behind why
14 they're equally rated -- weighted?

15 MR. MILLER: At the time the safety rating
16 methodology was developed, again it goes back to the
17 overarching approach that the agency takes as far as the
18 comprehensive review of the carrier's overall safety management
19 practices. The six factors break down as you indicated,
20 different aspects of the operation. Equal weighting to those
21 factors was considered appropriate at that time based on again
22 the comprehensive review and the overarching safety management
23 controls of the motor carriers.

24 As we move forward, the agency is continually looking
25 to improve our safety fitness determination processes and as

1 I've indicated in the comprehensive safety analysis 2010
2 initiative, that is one of our primary goals, is to achieve a
3 more reliable safety fitness determination process using the
4 real time data and real time safety fitness determinations.

5 MS. WEINSTEIN: Okay. And this would be determining
6 the critical and acute violations in each category?

7 MR. MILLER: Correct, and to answer another part of
8 your question, Ms. Weinstein, the -- apply the appropriate
9 level of risk associated with the different aspects of the
10 regulatory regime.

11 MS. WEINSTEIN: Thank you. I have a couple of
12 questions on the self-inspection issue. Does FMCSA know whose
13 actually doing the self-inspections and whose doing the third
14 party inspections? Are they large carriers, small carriers,
15 passenger carriers, freight carriers? Do you have those
16 numbers?

17 MR. MINOR: We don't have specific data on the exact
18 number of carriers that do the self-inspection to satisfy the
19 annual inspection rule versus those that go to a third party
20 facility, versus those that go to a state license inspection
21 station. We don't have that kind of detailed data for total
22 numbers.

23 MS. WEINSTEIN: Would you speculate that the carriers
24 who are likely to be less compliant would be more than likely
25 to do self-inspections?

1 MR. MINOR: Basically we don't have any data to
2 suggest that those carriers that go through the exercise of
3 doing the annual inspection don't do it correctly. We have a
4 number of violations of the periodic inspection rule that are
5 observed during roadside inspections, meaning that they rolled
6 into the inspection site with absolutely no proof of inspection
7 whatsoever. So the numbers of those who are caught in
8 violation for not having any documentation to show for the
9 annual inspection at all, that's a pretty good indication that
10 those who are doing it are probably doing it to the minimum
11 standards, and that those who really had no intent of complying
12 with the rule don't even bother going through the motions for
13 lack of a better term, faking it. They'll just go right
14 through without any inspection at all and get cited for it
15 during a roadside inspection. And also these violations are
16 observed during the compliance review process that is something
17 that can be noted through the review of the carrier's records
18 and files. They really don't have the facilities to do an
19 annual inspection, they don't have the documentation to show
20 that they've conducted the inspection.

21 MS. WEINSTEIN: I think we certainly have an example
22 in the accident that prompted this recommendation out of the
23 Tallulah, Louisiana motorcoach accident where they had done
24 self-inspection by the owner, and certainly were not living up
25 to meeting all the requirements.

1 If a carrier self-certifies, does that increase the
2 likelihood that a carrier would be selected for compliance
3 review?

4 MR. MILLER: The actual process of self-certifying
5 and doing the annual inspections themselves does not
6 necessarily play into the Safestat process. What does work
7 into the program would be the notation of violations of the
8 396.17, periodic inspection requirement, through either the
9 roadside inspection process or the compliance review process.
10 In fact, some 12 percent of our compliance reviews do cite that
11 particular violation and we have taken enforcement actions in
12 that area. So, you know, the fact that the carrier is self-
13 inspected, that doesn't play into the selection process per se.
14 Again, it goes to the actual roadside performance in feeding
15 into our monitoring systems, indicating that there are safety
16 performance problems with their maintenance programs, and we
17 want to go back and take a look at the motor carrier.

18 MS. WEINSTEIN: Thank you. I have no further
19 questions.

20 CHAIRWOMAN HIGGINS: Dr. Ellingstad?

21 DR. ELLINGSTAD: I'd just like to follow up very
22 briefly on this self-inspection, third party inspection kind of
23 an issue. It certainly not unheard of across the various
24 transportation modes that responsibilities for this kind of
25 thing are delegated to, to carriers or other manufacturers, et

1 cetera. What are the documentation requirements for, for these
2 inspections, whether they're conducted by employees of the
3 carrier, whether they're employed -- whether they're carried
4 out by contractors or whether they're carried out by your
5 inspectors?

6 MR. MINOR: Well, the proof of the annual inspection
7 are the required maintenance records for the carrier and for
8 the carriers that have self-inspection or go to a third party,
9 they would also be required to have proof of the inspector's
10 qualifications, some evidence that the individual has the
11 necessary training or experience to conduct commercial motor
12 vehicle inspections.

13 In the case of a motor carrier that relies on a third
14 party, the carrier would either have to have the proof in its
15 files or have access to the proof of the inspector's
16 qualifications. So if they are going to a commercial garage or
17 facility, they have to have an arrangement with that commercial
18 garage or facility to make available any proof that the
19 inspectors or mechanics that have conducted the inspections
20 have met the requirement for one year training and/or
21 experience conducting commercial motor vehicle inspections.

22 DR. ELLINGSTAD: Okay. And this documentation is
23 subject to review and how likely is it to be reviewed?

24 MR. MILLER: It is reviewed as part of our review of
25 Part 396 requirements in the compliance review process, that is

1 one of the things that we do look at.

2 DR. ELLINGSTAD: Okay. Is there any explicit
3 certification standard for either self-inspection or for the
4 third party inspection? Is there specific criteria for these
5 inspectors?

6 MR. MINOR: I'm not sure I fully understand the
7 question.

8 DR. ELLINGSTAD: Are the inspectors who do this for
9 the company, either as contractors or as their employees,
10 certified in some way?

11 MR. MINOR: They're required to show some
12 documentation that the individual has either attended a formal
13 training course or by virtue of their experience working on
14 commercial motor vehicles, they have accomplished the necessary
15 level of training or skill to do the inspection, and there's a
16 document that they would have to keep with certain working to
17 indicate that the carrier is explicitly certifying that this
18 individual does have the minimum requirements. Apparently
19 there's no formal requirement that they take a third party
20 training course and be certified by a third party. This is a
21 self-certification process that the carrier can go through to
22 verify that the employees that they have working on their
23 vehicles or conducting the annual inspection, meet the minimum
24 requirements and the carrier will simply certify in its records
25 that this person has the necessary training and skills.

1 DR. ELLINGSTAD: Thank you.

2 CHAIRWOMAN HIGGINS: Mr. Magladry.

3 MR. MAGLADRY: No questions. Thank you.

4 CHAIRWOMAN HIGGINS: Ms. Hersman.

5 MS. HERSMAN: Where are we on the crash study?

6 MR. MILLER: In association with the large truck
7 crash causation study?

8 MS. HERSMAN: This was the New Jersey crash study.

9 MR. MILLER: I'm not, I'm not familiar with the study
10 you're referring to, ma'am.

11 MS. HERSMAN: Okay. All right. We'll follow up with
12 somebody else that's familiar with it.

13 MR. MILLER: Are you referring to the northeast
14 quarter bus inspection project that we initiated, or I'm not
15 sure that there was --

16 MS. HERSMAN: This is the federal study, the bus
17 crash causation study FMCSA began in 2005 -- January 2005, and
18 now is continuing towards the end of 2007.

19 MR. MILLER: Okay. Yeah. Then that is the one that
20 is related to -- it was an offshoot of the large truck crash
21 causation study. That is underway. I don't know the current
22 status or the --

23 MS. HERSMAN: It's okay. If you're not familiar with
24 it, we can follow up and get a briefing on that later.

25 I know that many of you all have been around for a

1 while, and I have, too, not as long as many of you, but the
2 thing that is striking me as like Ground Hog Day, we're talking
3 about the same things, you know, year after year,
4 reauthorization to reauthorization, and I'm holding in front of
5 me the safety action plan from 2000, and it talks about the
6 mission is to improve truck and bus safety, to reduce
7 fatalities by 50 percent by 2010, and it talks about some
8 strategies to get there. And it talks about federal
9 investigators will increase compliance reviews on high risk
10 carriers, higher penalties for violators of federal safety
11 regulations will be imposed. With the states, a nationwide
12 effort to link vehicle registration and safety fitness. Safety
13 rating process used to determine motor carrier safety fitness
14 will be revised. It kind of goes on and on. All individual
15 carrier census records will be verified and updated.

16 And these are the same things. This was six years
17 ago. These things aren't accomplished. You know, now we're
18 talking about CSA 2010 to revise the rating system. You all
19 have listening sessions in 2004. It's 2006, and we're still,
20 we're still sitting here now talking about doing a study, and I
21 feel like we've known and we know what some of the problems
22 are, and I know that it's very difficult for you all to move
23 through the regulatory process sometimes, but more studies and
24 more delays are not going to result in putting unfit carriers
25 out of business.

1 Okay. There's somewhat of a crisis of confidence
2 because I think that we keep feeling like we're repeating
3 ourselves. I don't want to discount some of the process that
4 you all have made because there have been some things that have
5 been accomplished, but I'm looking on the OMB website, and it's
6 now talking about -- we're not talking about 50 percent
7 reduction, but now you all are talking about your large truck
8 fatalities per 100 million miles traveled. And you're goal
9 that's listed for your performance measures for OMB is a 1.65
10 rate per 100 million miles traveled. And I think we still have
11 no clear goal on how to get there, and we keep talking about
12 the same things, and it's really I think frustrating to kind of
13 watch.

14 I know you've accomplished some good things, and so I
15 do want to give you credit for the work that's been done on the
16 medical program. I think that's one area where you are moving
17 ahead. The staff did a great job covering some of our
18 recommendations. So I'm going to focus on something that they
19 didn't talk about, which is on our most wanted list, and it's
20 the integration of CDL and the medical certificate.

21 There was an ANPRM in July 1994, and a NegReg was
22 attempted in '95. In December 2001 -- all right. It was
23 required by MCSIA in Section 215. In December 2001, you said
24 you had a proposed rule in 2002. Then it got pushed back to
25 September of 2002. Then it extended to March of 2003. Then

1 promised again to us here in December 2004. SAFETEA-LU
2 directed you guys again to publish something about a plan on
3 doing this within 120 days of enactment, and we're still
4 waiting for this. This is a critical piece of people being
5 able to do roadside inspections and enforce this, and if there
6 is a reason why you can't get this accomplished, explain it
7 because I've never really heard why we're having so much
8 trouble getting this done, and why -- when we seem to get so
9 close, that you all really think, I mean Administrator Sandberg
10 personally, you know, committed that this was coming out.
11 Where, where is this and what is the problem? Is there
12 anything that anybody can do to help you all move this along?

13 MR. MINOR: We believe that we've developed an
14 effective strategy for improving motor carrier safety, and that
15 many of the things that were cited in the original 2000 safety
16 plan, we have been very effective at accomplishing them, and
17 one of the major accomplishments is the med cert rulemaking
18 that is now at the Office of Management and Budget for review.
19 So we've made tremendous progress getting it that far. We
20 think that we've developed a plan that the states can go along
21 with and implement without a tremendous economic burden, and
22 it's a plan that will help to greatly decrease the likelihood
23 of drivers operating with falsified medical certificates, and
24 it will greatly facilitate roadside inspectors checking on the
25 medical status of drivers operating in interstate commerce. So

1 we think we've made tremendous progress with the med cert
2 rulemaking and we hope that it will be cleared by the Office of
3 Management and Budget in the very near future. So we look
4 forward to that being published, and we look forward to having
5 all interested parties review our proposal for implementing the
6 med cert rulemaking and offer their comments to us. So we
7 believe we've made a great deal of process in that area as well
8 as in many other areas that were mentioned in that 2000 safety
9 plan.

10 MS. HERSMAN: When you say med cert rulemaking, do
11 you mean the integration of the CDL and the medical?

12 MR. MINOR: Yes, I'm sorry. That's one of the
13 nicknames that we've given it.

14 MS. HERSMAN: Well, because there's a lot that goes
15 into your medical certification program that you've
16 accomplished already, and I do want to give you credit for
17 that.

18 So not to give you another deadline that you're going
19 to miss, but if you're saying it's at OMB, are we looking at a
20 90 day potential that we could see something on this issue?

21 MR. MINOR: Typically the Office of Management and
22 Budget can take up to 90 days, and if they see some issues in
23 the rulemaking, they can certainly exercise their prerogative
24 and take a little bit longer, but we don't anticipate any major
25 delays in getting it through the Office of Management and

1 Budget. We believe it's a very straightforward and effective
2 approach that we've outlined in our proposal, and that we
3 anticipated getting cleared in the not too distant future.

4 MS. HERSMAN: Well, that's great news, and hopefully
5 now we'll direct our animus towards OMB and not you if it
6 doesn't get done. Thank you.

7 CHAIRWOMAN HIGGINS: Ms. McMurtry?

8 MS. McMURTRY: I have no questions.

9 CHAIRWOMAN HIGGINS: Well, that leaves me. I have a
10 number of questions really sort of in the clean up nature that
11 I want to ask to FMCSA. In your description of the various
12 roadside inspections, you indicated the level 1s were the most
13 thorough. There were several roadside inspections for Global
14 in the preceding two years before the accident. Do you know
15 what levels those inspections were? I've looked at the
16 reports, and I must say I can't discern?

17 MR. MILLER: They were a combination of level 2 and
18 level 3 inspections, which would indicate that they were a walk
19 around inspection of the vehicle with driver emphasis on the
20 level 2s, and specifically the level 3 was driver only
21 inspection.

22 CHAIRWOMAN HIGGINS: Okay. And what would trigger a
23 level 1 inspection?

24 MR. MILLER: Again, the level 1 inspection would be
25 conducted at a location that would accommodate the need to get

1 underneath the motorcoach, whether through the use of ramps or
2 a pit.

3 CHAIRWOMAN HIGGINS: So the maintenance issues that
4 we think are significant potentially in this accident, would
5 those be -- is there any way to look at those issues on
6 anything but a level 1?

7 MR. MILLER: The level 1 would be the most effective
8 manner in which to find these particular defects, but as we
9 heard from the testimony yesterday, even the industry
10 themselves recognized the -- the manufacturers themselves
11 recognized the difficulty in which to see inside the hub, you
12 know, the specific components of that particular vehicle, even
13 through an undercarriage inspection process. So it is, it is
14 the best effective way to get there. Certain defects are very
15 difficult depending on how the components of the vehicle are
16 designed.

17 CHAIRWOMAN HIGGINS: Although as I recall the
18 discussion, the, the issue was checking the fluids in the, in
19 the wheels for the bearings because that seems to be critical
20 here, and my recollection of the discussion was that it is a
21 visual inspection?

22 MR. MILLER: Yes.

23 CHAIRWOMAN HIGGINS: Our representative from
24 ArvinMeritor.

25 MR. Miller: If I might address that, Chairman

1 Higgins. The difficulty with inspecting the hub assembly, the
2 hub end, there's a view glass that gets corroded over time with
3 mud, dirt, road tars and the like, that would give you a visual
4 indication as to the proper level of lubrication within that
5 bearing system. To get beyond the view glass if you will,
6 would require the removing of one of the seals, that contained
7 that particular oil. During our roadside inspection process,
8 we cautioned, in fact, our inspectors will not remove any piece
9 of equipment from the vehicle. We would ask the driver to do
10 such a thing. In this particular component, we're very
11 cautious as to asking the driver to remove that particular seal
12 in the fact that they may not be properly qualified to remove
13 it and place it properly back on the vehicle, thus, as the
14 vehicle continued down the road, could lose the oil that's
15 within that component. It's a complex issue with inspecting
16 that very specific component.

17 CHAIRWOMAN HIGGINS: Which then goes to the question
18 asked earlier about maintenance records. Just as somebody who
19 is not that familiar with these vehicles, it strikes me that if
20 we don't have good maintenance records in terms of
21 recordkeeping, and we have -- we can't do the visual inspection
22 on the wheel bearings, that there -- that might call for a
23 higher level of inspection. I'm just asking whether that kind
24 of -- if the system allows for that or would -- going in that
25 direction, even if that concept makes sense?

1 MR. MILLER: Given the catastrophic event of
2 September 23rd, last year, obviously this brings the issue to
3 light that perhaps additional approaches to the inspection of
4 that particular component ought to be reviewed and, you know,
5 as we work with CVSA in developing processes for the conduct of
6 level 1 inspections or level 2 inspections in t his case, to
7 work on, you know, improving that process.

8 CHAIRWOMAN HIGGINS: Let me just ask you since we
9 have so many people here who are parties to this investigation
10 in this hearing, in that kind of effort to better understand
11 how to address maintenance issues, is it -- do you work with
12 the manufacturers of these various components?

13 MR. MILLER: Absolutely. The manufacturing and the
14 industry partners are part of the Commercial Vehicle Safety
15 Alliance, and they do participate in these types of discussions
16 on the vehicle committees.

17 CHAIRWOMAN HIGGINS: Okay. Thank you. Another
18 question related to inspections, do -- again there were
19 numerous roadside inspections of -- involving Global over the
20 two years prior to the accident. Do roadside inspections have
21 access to the results from previous roadside inspections or
22 previous compliance reviews when they pull a truck over?

23 MR. MILLER: Yes. Through the inspection selection
24 system software that was referenced in Panel 7 I believe and
25 prior panels as well, that particular software package gives

1 the, the inspector at the roadside an indication of whether or
2 not this particular company has safety performance, should they
3 inspect or not inspect. Again, it's not a mandatory. It's an
4 indicator. Within that software package, it does provide some
5 summary data with regard to types of violations that were noted
6 on prior roadside inspections as well as the current safety
7 rating of the motor carrier as a whole, the current Safestat
8 information about that motor carrier. It's all within that
9 particular data set.

10 CHAIRWOMAN HIGGINS: How about state information?

11 MR. MILLER: When you say state information, I
12 believe you indicate the roadside inspection, the crashes that
13 are uploaded by the states?

14 CHAIRWOMAN HIGGINS: The state compliance review.

15 MR. MILLER: Yes. That information would be
16 contained in that particular -- if it's collected as part of
17 the motor carrier management information system, it would be
18 reported out in the ISS database.

19 CHAIRWOMAN HIGGINS: Even though it might not be
20 reflected in the rating?

21 MR. MILLER: Correct.

22 CHAIRWOMAN HIGGINS: English language, we talked
23 earlier about the requirements in the regulations. Commercial
24 driver's license which is what every operator of one of these
25 vehicles has to have, the test as I understand it can be

1 administered in a foreign language and I'm wondering if we know
2 how often that occurs and how many foreign languages the test
3 is administered in.

4 MR. MILLER: I don't have any specific data as to --
5 again, that is a state specific ability, each individual state
6 determines how many different languages they may or may not
7 allow the test to be taken in. I will submit to you that we
8 will get that information for the Board and provide that as
9 part of the record.

10 CHAIRWOMAN HIGGINS: Thank you. It seems to me that
11 it would be interesting to look at given the rules that are on
12 the books. What are states doing in this area, and it suggests
13 to me at least some inconsistency, if not some incompatibility
14 between our various requirements.

15 MR. MILLER: Yeah, we are looking at that particular
16 issue as part of the CDL program as well.

17 CHAIRWOMAN HIGGINS: Thank you. And then we had a
18 lot of discussion yesterday about fire extinguishers, and it's
19 my understanding based on that discussion, it is FMCSA who
20 makes the rules vis-à-vis fire extinguishers?

21 MR. MINOR: Yes. We have a requirement that all
22 commercial motor vehicles operated in interstate commerce, that
23 they be equipped with a fire extinguisher, and that's a 5 BC
24 fire extinguisher for trucks and buses and a 10 BC fire
25 extinguisher for trucks transporting hazardous materials.

1 CHAIRWOMAN HIGGINS: And do you know the history of
2 the 5 pound requirement?

3 MR. MINOR: It's been on our regulations for
4 approximately probably 30 or 40 years now, for the 5 BC fire
5 extinguisher. And I'm not sure of any specific research that
6 was conducted to come up with that particular number. It's
7 just one that ended up in the regulations through a notice and
8 comment rulemaking, and it's pretty much been there ever since.

9 CHAIRWOMAN HIGGINS: I recognize that we're now just
10 beginning to understand the dimensions of the bus fire problem.
11 I think we heard a lot yesterday about how useful that
12 particular kind of fire extinguisher is on a motorcoach fire.
13 Has -- do you know whether FMCSA is giving any thought to
14 taking another look at that requirement?

15 MR. MINOR: To date we haven't received any safety
16 data or other information to suggest that there are some fires
17 of the type that if they had only a slightly larger fire
18 extinguisher it would have made a difference. We haven't
19 gotten any feedback from the industry or the fire fighting
20 community that there should be an upgrade to the standard.
21 We're certainly open to anyone that's got any data or
22 information that they would like to share with us on specific
23 types of fires that could be successfully taken care of by the
24 driver, if only he had a larger fire extinguisher. So we're
25 open to anyone that's got a petition that they'd like to send

1 us with additional data, and to date we haven't received any
2 petitions from anyone to update the firefighter -- the fire
3 extinguisher standards.

4 CHAIRWOMAN HIGGINS: I think we heard a lot of
5 conversation about that yesterday. The insurance industry
6 certainly seemed to think that was an issue. I just think it's
7 something we should look at.

8 In other modes of transportation, I'm thinking of
9 aviation and others, there's an effort and a lot of talk about
10 safety management systems. Is there any requirement that FMCSA
11 has in their regulations for operators of motorcoaches or other
12 commercial vehicles to have a safety management program?

13 MR. MILLER: That is basically what the safety
14 fitness standard is within Part 385, that they are to have
15 safety management practices in place that will meet the safety
16 fitness standard, to insure that they have drivers and vehicles
17 that are properly qualified and proper working condition at all
18 times. So, so is there a specific management plan? Again,
19 it's an overarching approach to safety management as a whole.
20 The regulations are there. Each individual motor carrier has
21 unique operations as to the types of vehicles and the types of
22 drivers they utilize. It would be counter productive to have a
23 prescriptive safety management plan versus to have safety
24 management controls in place to meet the safety fitness
25 standard, to insure compliance with all safety regulations

1 within the Federal Motor Carrier Safety Regulations.

2 CHAIRWOMAN HIGGINS: I understand that the
3 regulations are on the books. I guess -- and I'm not terribly
4 knowledgeable about this, but certainly in aviation, I'll use
5 that as an example, where they're moving to a systems approach
6 rather than just, you know, compliance approach, and I'm
7 wondering as a practice, yes, of course, the expectations that
8 they will comply with the rules, but I'm wondering if there's a
9 more forward leaning and maybe some from industry would want to
10 comment about this, given that we realize how -- it takes --
11 it's very difficult to have enough people out there to try to
12 insure compliance with the regulations.

13 MR. MILLER: In deference to Member Hersman's
14 concerns with CSA 2010, certainly as we move forward in that
15 agenda with regards to the overarching approach to our
16 oversight of the compliance and enforcement program, that, you
17 know, safety management plans or the like, we've done it with
18 the hazardous materials program, with regard to security plans,
19 you know. As the data presents itself, perhaps that could be
20 part of the forward approach to compliance and enforcement
21 oversight. We'll certainly take that under consideration.

22 CHAIRWOMAN HIGGINS: Thank you. And finally, this --
23 the focus of this hearing for this accident has been on the bus
24 operator, and I'm interested in knowing whether there are any
25 requirements for the bus owner or the bus -- the company that

1 leases the bus. In this particular case, the bus was actually
2 owned by a company or an operation in British Columbia. It was
3 leased to a company in Maryland who then subleased it to
4 Global, actually in violation of their agreement with the
5 company in Vancouver. And I'm wondering whether the regulatory
6 scheme has -- whether this is an issue at all, whether it
7 should be an issue, whether there's any responsibility upon the
8 part of owners or lessors for vehicles given that there's a
9 financial arrangement between the owner and the lessor and sub-
10 lessor.

11 MR. MILLER: The safety requirements, the safety
12 regulations apply to the person whose actually operating the
13 vehicle, regardless of whether they own it or lease it. So
14 with regards to that particular trip, you know, Global Limo was
15 the, you know, required party to be in compliance and operate
16 the vehicle safely and have a properly qualified driver behind
17 the wheel.

18 With regards to the lease and sublease, those issues
19 I can't speak to the merits or non-merits of regulatory
20 approach to fixing that. I don't have an answer for you,
21 ma'am.

22 CHAIRWOMAN HIGGINS: Thank you. Are there any other
23 questions from my colleagues or any of the parties?

24 (No response.)

25 CHAIRWOMAN HIGGINS: If not, then I think we are --

1 can conclude our hearing. And I have a brief closing statement
2 that I will read.

3 This portion, since there are no other witness, this
4 portion of our investigation is concluded. I want to emphasize
5 that in accordance with our procedures, this investigation will
6 remain open to receive at anytime new and pertinent information
7 regarding the Wilmer, Texas accident and related safety issues.
8 The Safety Board may, at its discretion, reopen the inquiry to
9 insure that such information is made a part of the public
10 record.

11 To repeat what I said in my opening statement, the
12 parties to this hearing have the opportunity to submit proposed
13 findings of facts, conclusions and recommendations. Please
14 forward any such submissions to Ms. Michele McMurtry, the
15 Hearing Officer, at our Safety Board's Headquarters here in
16 Washington, within 30 calendar days, after the transcript is
17 received. Any parties making such a submission should also
18 send copies of the proposals to each of the other parties. Any
19 and all such proposals will be made part of the public docket
20 and will receive careful consideration during the Safety
21 Board's analysis of the evidence during the preparations of the
22 Safety Board's final report of this accident.

23 From the evidence collected, the Safety Board will
24 determine the probable cause of this accident and make any
25 recommendations necessary to prevent similar accidents in the

1 future. The final report will take several months to complete.
2 However, safety recommendations may be made at anytime. And, I
3 would add parenthetically that this is a high priority for the
4 Chairman, and I know he has asked our highway staff to try and
5 expedite completion of this report so that we can make
6 recommendations to move forward here.

7 I want to thank the parties in this proceeding for
8 their cooperation, not only during this proceeding, but also
9 throughout the entire investigation of this accident. Also on
10 behalf of the Board of Inquiry and Technical Panel, I want to
11 express sincere appreciate to all individuals, groups,
12 companies, associations and agencies that have participated.
13 And last but not least, I want to thank all of the witnesses
14 who gave testimony during this hearing.

15 And finally, I want to thank my colleagues who served
16 on the Technical Panel and my colleagues who serve on the Board
17 of Inquiry, and special thanks to our Hearing Officer, Michele
18 McMurtry. And as in any kind of effort like this, there are
19 those who you've seen during the course of these two days, who
20 have been up here or served to the Technical Panel, but there
21 are a lot of other people who helped put these two days
22 together, and I want to thank them publicly for all their work.

23 From the NTSB, Ms. Mary Jones, Ms. Avis Clark (ph.),
24 Ms. Gwena Regan (ph.), Mr. Dwight Foster; from the NTSB Office
25 of Research and Engineering, Dr. Joe Kolly and Mr. Doug Brazier

1 (ph.); from the Office of Safety Recommendations and
2 Communications, Mr. Pat Caricio (ph.); from the Office of
3 Railroad, Pipeline and Hazardous Materials, Mr. Jim Henderson;
4 from the Office of Public Affairs, Mr. Keith Holloway and
5 Mr. Ted Lapacowitz (ph.); and from the NTSB Office of
6 Transportation Disaster Assistance, Mr. Don Chupp and
7 Ms. Sharon Brison (ph.).

8 Finally, this room that we've been in for the last
9 two days, again there are people who have helped made this
10 happen, Mr. Chris Basset (ph.), Mr. Antoine Downs (ph.) and
11 Ms. Sharon McCloud. These are some of the people who have
12 worked here, and I'm sure there are others whose names I don't
13 have and to all of those who helped make this possible, thank
14 you for your help and your hard work.

15 Again, on behalf of the Safety Board, I want to
16 express our sympathy and support to the families of those who
17 died and those who were injured. This is a difficult accident
18 for the victims and the families and a challenge for the Safety
19 Board and all who have participated. We still have a way to go
20 on this investigation, and we'll work as hard in the coming
21 months as we have since last year, to understand the issues in
22 this accident and to make recommendations and to urge the swift
23 implementation to improve transportation safety.

24 This hearing is now adjourned.

25 (Whereupon, at 5:30 p.m., the hearing in the above-

1 entitled matter was adjourned.)

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CERTIFICATE

This is to certify that the attached proceeding before the

NATIONAL TRANSPORTATION SAFETY BOARD

IN THE MATTER OF: THE PUBLIC HEARING INVOLVING MOTORCOACH
 ACCIDENT AND SELECTED FEDERAL MOTOR
 CARRIER SAFETY ADMINISTRATION
 OVERSIGHT ISSUES
 WILMER, TEXAS - SEPTEMBER 23, 2005

DOCKET NUMBER: HWY-05-MH-035

PLACE: Washington, D.C.

DATE: August 9, 2006

was held according to the record, and that this is the
original, complete, true and accurate transcript which has been
compared to the recording accomplished at the hearing.

Roxanne Parsons
Official Reporter